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CURRENT TOPICS

Law Reform Committee: Duties of Occupiers

AN imposing array of judges, senior members of the Bar and university professors have now " sat on " the subject of the liability to invitees, licensees and trespassers on land, and with the exception of one leading counsel, Mr. KENNETH DIPLOCK, Q.C., found it wanting. The Law Reform Committee, entrusted with this task by LORD SIMONDS when Lord Chancellor, have now issued a lengthy report (Cmd. 9305; 1s. 6d. net) comprehensively reviewing the existing law and recommending drastic alterations. The occupier's duty of care to the contractual visitor, the report says, should be the common duty owed to all lawful visitors, except where the contract expressly imposes a different duty. The same rule should apply to the occupier's duty to third persons permitted to use the premises by the contractor in accordance with the terms of his contract with the occupier. The distinction between invitee and licensee, the committee think, should be abolished, and the occupier should in all cases have to take such care as is in all the circumstances of the case reasonable to see that the premises are reasonably safe for the purpose for which a person is invited or allowed to be on the premises, subject to any alteration of this duty by representation or condition made in connection with the invitation or licence. The occupier's liability for the negligence of the independent contractor should depend on whether the occupier acted reasonably in entrusting the work to an independent contractor and took reasonable steps to satisfy himself that the work was properly done so as to leave the premises in a safe condition.

Duties to Visitors

THE Law Reform Committee's Report appears to use the word " visitors " to describe generally all persons on premises by the occupier's invitation or permission. They propose rules with regard to special kinds of visitors, which would aim at uniformity in the duty of occupiers. To a visitor for the purpose of maintenance, repair or construction, the occupier should be under no greater duty than to one entering for the normal use of the premises. Knowledge by a visitor of a danger should not in itself discharge the occupier, but should be taken into account, together with any warnings given, in deciding whether the occupier had discharged his duty with regard to that danger. Other proposed rules aim at safeguarding the principles of contributory negligence and *volenti non fit injuria* in relation to dangers on the premises. Where a lessor is bound by contract with his tenant or by statute to keep demised premises or any part thereof in repair, and in consequence of any breach by him of that obligation any member of the tenant's family, or person residing with or lawfully visiting the tenant, sustains injury, the report states that the person injured should have the same right of action against the landlord as he would have had if he himself had been the tenant. As regards the duty of an occupier to trespassers, the report does not recommend any alteration of the law, nor does it recommend any alteration in the law of

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master and servant or of statutory duties of occupiers or in the provisions of the National Parks and Access to the Countryside Act, 1949. The Committee consider that their recommendations in regard to the liability of occupiers should bind the Crown.

Estate Duty: Delivery of Inland Revenue Affidavits

IN amplification of the Inland Revenue notice printed at p. 569, *ante*, which modified the practice whereby an Inland Revenue affidavit is lodged at the Principal Probate Registry or a District Probate Registry without prior reference to the Estate Duty Office, a further Inland Revenue notice dated 22nd November states that this practice applies in all cases in which the only property passing is the deceased's own estate devolving under his will or intestacy and is under £2,500 in net value. Where, however, there is other property passing on the deceased's death of any of the following categories, and the total value (including the deceased's own net estate) amounts to £2,500 or more, the Inland Revenue affidavit should in the first instance be lodged at the Estate Duty Office, whether or not estate duty is being tendered on the affidavit in respect of any of the property in these categories. The categories are: (1) taxable gifts *inter vivos*; (2) property in the joint names of the deceased and another passing by survivorship; (3) property comprised in a settlement made by the deceased or made, directly or indirectly, at his expense or out of funds provided by him; (4) settled property which is not so comprised but (*a*) of which the deceased was competent to dispose and did dispose, by the exercise, by his will or otherwise, of a power conferred on him; or (*b*) which devolves on his personal representatives as assets for the payment of his debts; (5) moneys payable under any unsettled policy of assurance not forming an "estate by itself." Full examination of affidavits so lodged at the Principal Probate Registry or a District Probate Registry will take place after the grant has been issued. The issue of the grant should not be regarded as any indication that the affidavit has been accepted as satisfactory by the Estate Duty Office.

Non-Jury Actions

IT is one of the post-war axioms of litigation that parties to long non-jury actions are lucky if they can get their cases heard within a year of setting down. Mr. Justice HILBERY, who has special experience of applications for cases to stand out, for good, bad, and sometimes ingenious reasons, said on 16th November that it made him quite angry to hear of talk in the Press and elsewhere of delay in the hearing of cases. He said that there was no such thing, and delays were caused solely by the parties. The long non-jury list, which was published on 16th November shows that at least ten months must elapse between the date of setting down and the date of trial in the majority of cases. Of 466 cases in the list, 351, set down between 1st February, 1954, and 6th April, 1954, are marked "not before" 22nd November, 1954. Of the remainder, eighty were entered in January, 1954, sixteen earlier than December, 1953, twelve in December, 1953, and three in February, 1954. One case in the list was entered as far back as January, 1953. The impartial view seems to be that both Bench and Bar do their best with an apparently implacable situation, and it is not often that real fault can be found with either. The remedy is to increase the jurisdiction of the county court so as to correspond with the fall in the value of the £, and to extend legal aid to the county court. Only so will the High Court cease to be harassed by long waiting lists, and the county courts be again fully occupied.

Tape-Recordings as Evidence

SOME months ago, suggestions were made in the House of Commons that tape-recorders should be used to record interviews between police and suspected persons. The suggestion arose from the fact that accused persons so frequently allege that their statements were fabricated or have been tampered with. At the time, it was pointed out that tape-recordings were also susceptible to interference, and possibly the first case of its kind, wherein a tape-recording was admitted as evidence and subsequently proved to have been "doctored," occurred last week before Judge DAYNES, Q.C., in the Southwark County Court. At the first hearing, a recording of a conversation between the plaintiff and the defendant was admitted as evidence. The plaintiff denied, in reply to counsel, that he had in any way tampered with the recording. At the resumed hearing, a tape-recording engineer was called who said he could recognise that parts of the conversation had been erased and re-recorded. The background noises were different in various sections of the recording and the microphone had been stood nearer to the recording machine. The plaintiff then admitted that he had altered the recording. He had played it through to his wife, who had been disgusted with some of his bad language. When she had gone to bed he had erased and re-recorded these bits without the swear words. Judge Daynes said he might well go to prison for his perjury.

A "Truth Drug" Case

IN a manslaughter case at Nottingham Assizes on 19th November evidence was given by Dr. HUGH GARLAND, of Leeds, that the accused, who had said that he had had a black-out immediately before the accident concerned, agreed to undergo a "truth drug" test with pentathol and methydrene. "The story he told me in his normal state," said Dr. Garland, "and the story he told me while under the pentathol and methydrene were precisely the same, and it is the same story that he has told the jury in court to-day. In the whole of my experience I have not known anyone who was able to lie while under the influence of these drugs. No one can resist their effects." New methods of detection demand new rules for the protection of accused persons, and if it is elementary that such persons have a right to refuse to take drugs which loosen their tongues, it is, we hope, equally elementary that their refusal should not be construed as a sign of guilt. In the Nottingham case the accused was acquitted, and his agreement to submit to the drug was obviously due to his conviction of his innocence. It does not by any means follow that a refusal to submit is a sign of guilt.

Wireless Licence Fees

AN action before VAISEY, J., on 15th November (*The Times*, 16th November), was stated by counsel for the plaintiffs to be based primarily on the Bill of Rights, which provided in substance that no British subject could be charged a fee without the authority of Parliament. The plaintiffs used mobile radio and some 10,000 vehicles were concerned. They had been caused great expense whenever the Post Office had changed the frequencies allotted to them, and they asked for a declaration that a condition in their licences providing for changes in frequency was contrary to the provisions of the Wireless Telegraphy Act, 1904. In June, 1954, the Wireless Telegraphy Act, 1949, had been brought into operation, giving the Government power to change the frequency. The industry of junior counsel had discovered that the only power to charge fees under the 1904 Act was under regulations, and no regulations had been made, and this

applied even to the licences of domestic licence-holders. The dispute as to the right to impose conditions in licences having become academic, the ATTORNEY-GENERAL agreed that the action should be settled on repayment of the licence fees and payment of the costs of the action. It having been said in another place on 10th November, 1954, that it was proposed to introduce retrospective legislation, the claim for the declaration was abandoned. As to the right to charge fees for licences, the Attorney-General admitted that there had been no regulations, but did not accept as entirely accurate the statement that the Post Office had no right to charge such fees. In reply to an invitation by the judge to invoke the fiction of " the lost regulation," based on the presumption of the legal origin of a long course of conduct, the Attorney-General said that he would be extremely brave to say that the Post Office had lost a regulation.

Legal Advice in Letters of Allotment

THE chairman of the Stock Exchange, Sir JOHN BRAITHWAITE, suggested in his address to the Chartered Institute of Secretaries on 16th November, 1954, that allotment letters and letters of rights should be self-explanatory and easy to understand without professional assistance. They should contain, he said, either by way of preamble to the technical requirements of the Companies Act or in an accompanying letter, a simple statement of what the allotment or right is, what courses the stockholder can take with regard to it, and what he should do when he has decided which course to follow. It is the opinion of lawyers as well as laymen that citizens should receive the plainest guidance as to the law and as to their rights when dealing with companies or government departments. There is a growing tendency to give such guidance in official communications. The implication that professional guidance can be dispensed with in any matters of this nature by providing simple guidance was probably not intended. Sir John did not think that a case could be made out for a compulsory form of allotment letter, thus accepting the rule that circumstances alter cases. The wise man knows that it is always an economy in the end to consult his lawyer in time.

Solicitor-Veterans of the Boer War

ON 18th December, 1902, The Law Society gave a banquet for solicitors and articled clerks who had served in the South African Campaign of 1899–1902. On 15th November, 1954, in a candle-lit room overlooking Pall Mall, four of the nine known survivors of the 106 officers and men who were present on that occasion met again for dinner with their guests, who included the VICE-PRESIDENT and the SECRETARY of The Law Society. The idea was that of Mr. H. H. HARRIS, of Slough, who served in South Africa with the 1st (King's) Dragoons and who took the chair at the dinner. He was supported by the senior veteran, Mr. H. C. ANSTEY, of London, who served with the 5th Battalion the Royal Warwickshire Regiment, Mr. G. CARTER, of the City of London Imperial Volunteers, who travelled from Bury St. Edmunds for the reunion, and Mr. J. G. H. COCKBURN, B.A., of Hove, who saw service in South Africa with the 2nd Volunteer Company of the Royal Sussex Regiment. Mr. Anstey, in replying to a toast, contrasted with its successors " the last of the gentlemen's wars " in which " you had all the fun of hunting with only four times the risk." The speech which the then President of The Law Society delivered at the banquet in 1902 was read out, and then recollections of Ladysmith, Kimberley and Springfontein were exchanged and the fortunes of soldiers, solicitors and taxpayers to-day contrasted with those of half a century ago.

HOUSING REPAIRS AND RENTS ACT, 1954: COUNTY COURT JURISDICTION.

THERE are certain matters arising under the Housing Repairs and Rents Act, 1954, which may be determined by the county court. It may be of interest to collect and discuss these matters under the following headings.

(1) *Recovery by lessees of proportion of expenses incurred in rendering house fit for human habitation.*—Section 9 of the Housing Act, 1936, empowers local authorities to enforce the repair of houses which are unfit for human habitation. For this purpose, a local authority serves a notice requiring the execution of the works necessary upon " the person having control of the house." The person who receives the rack-rent of the house, whether on his own account or as agent or trustee for any other person, or who would so receive it if the house were let at a rack-rent, is to be deemed to be the person having control of the house. " Rack-rent " means a rent which is not less than two-thirds of the full net annual value of the house. If this notice is not complied with, s. 10 of the Housing Act, 1936, empowers the local authority to enter on the premises and do the work themselves and recover the expenses which they incur in doing the work from the person having control of the house. If the person who is required to carry out such works of repair or pay the local authority's expenses for carrying out the work is a lessee of the house or the lessee's agent, he may be entitled to recover from the lessor part of the expenditure (s. 10 of the Housing Repairs and Rents Act, 1954). This provides a remedy which is alternative to the remedy by way of charging order under s. 20 of the Housing Act, 1936, and is applicable to tenants under periodic tenancies as well as those holding for fixed terms. The amount of the expenditure recoverable by the lessee or his agent from the lessor may, in default of agreement between the parties, be determined by the county court having regard to (*a*) the obligation of the lessor and the lessee under the lease with respect to the repair of the house; (*b*) the length of the unexpired term of the lease; (*c*) the rent payable under the lease; and (*d*) all other relevant circumstances (s. 10 (1), *ibid*).

(2) *Possession of houses let in lodgings.*—Where a house is let in lodgings or occupied by members of more than one family, and the local authority consider that the house is defective or not reasonably suitable for occupation by the number of individuals or households accommodated for the time being on the premises, the local authority may serve on " the person having control of the house," as defined above, a notice specifying the works which that person is required to do for rendering the premises suitable for such occupation, and requiring that person, in default of the execution of these works, to take such steps as are reasonably open to him (including if necessary the taking of legal proceedings) for securing that the number of individuals accommodated on the premises, or the number of households accommodated there, or both, is limited in any manner specified in the notice (s. 11 of the Housing Repairs and Rents Act, 1954). The position is that, if the person on whom the notice is served does not

comply with the terms of the notice relating to carrying out certain work on the premises, such person must reduce the number of individuals or families residing in the house; he may be able to do this by agreement but it is far more likely that no individual or family will voluntarily vacate the house, especially at short notice, and in those circumstances the person upon whom the notice has been served will have to obtain the requisite order for possession in the county court. It must be understood that in such cases the landlord is able to obtain possession only for the purpose of reducing the number of persons or families in occupation, and he may in effect only do that if so compelled by the local authority. Nothing in the Rent Restrictions Acts will prevent a landlord from getting possession for this purpose. But a landlord is not entitled to ask for vacant possession merely if he wants to carry out works of repair which would enable him to take the particular house or flat himself and live in it or allow one of his friends to do so. And, indeed, where the landlord wishes to have access for repair work he cannot apply for possession. Such an application can *only* be made to the county court where the landlord is required by the local authority to reduce the number of persons or families in occupation.

It may be that, when the above-mentioned notice is served on the person having control of the house, he may desire to appeal against that notice in the first instance. He may so appeal to the county court within twenty-one days after the date of the service of the notice (s. 11 (4) of the Act of 1954, applying s. 15 of the Housing Act, 1936).

It may be mentioned that failure to comply with any requirement of the notice in question is specifically made an offence and renders the offender liable on summary conviction to a fine not exceeding £5 and £2 for every day on which the failure continues (s. 11 (3) of the Act of 1954).

(3) *Repairs increase.*—In order to qualify for a repairs increase under Pt. II of the Act of 1954, it is necessary for a landlord to produce satisfactory evidence that work of repair to a specified value has been carried out on the dwelling-house during a specified period (s. 23 and Sched. II). The production of satisfactory evidence involves the making of a declaration in a prescribed form that the conditions justifying an increase of rent are fulfilled (i.e., that the dwelling-house is in good repair and reasonably suitable for occupation) *and* a declaration that work of repair has been carried out to the value of either three times the amount of the statutory repairs deduction in twelve out of the previous fourteen months or, where the notice of increase is served before 30th December, 1954, six times the amount of the statutory repairs deduction in three out of the past four years. The form of notice of repairs increase is to be found in Sched. I to the Housing Repairs (Increase of Rent) Regulations, 1954 (S.I. 1954 No. 1036), and the form of declaration, adapted to different circumstances, which must accompany the notice of repairs increase, is in Sched. II to those regulations.

If the foregoing conditions are fulfilled, the landlord is then entitled to claim a "repairs increase" at the annual rate of twice the amount of the statutory repairs deduction, provided that, where the landlord is responsible in part only for the repair of the dwelling-house, the amount of the repairs increase shall be reduced proportionately (s. 23 (2) of the Act of 1954). Any question whether the landlord is responsible for repairs or as to the amount of any reduction in the "repairs increase" may be agreed in writing between the landlord and the tenant or, on the application of either of them, be determined by the county court (s. 23 (5)), whose determination shall be final and conclusive (s. 32). As to when a landlord, as between himself and the tenant, is deemed to be wholly responsible for the repair of a dwelling-house, reference should be made to s. 30 of the Act, which only applies in respect of the "repairs increase" (and the "permitted increase" under the Rent Restrictions Act, 1920).

An application to the county court to determine any such question as to whether the landlord is responsible for repairs or as to the amount of any reduction in the "repairs increase" shall be made to the court in the district of which the premises are situate (r. 2 (1) (*c*) of the Rent (Restrictions) Rules, 1954 (S.I. 1954 No. 1073 (L.10)).

The form of summons on application to determine whether the landlord is responsible for repairs is Form 18 in the Rent (Restrictions) Rules, 1954. The form of order on that application is Form 19 in those rules. In this connection it may be mentioned that the amount of any reduction which may have to be made in the "repairs increase" is also determinable on the summons to determine whether, and to what extent, the landlord is responsible for repairs. For the fee payable on such application, see para. 8 of the County Court Fees (Amendment) Order, 1954 (S.I. 1954 No. 1106 (L.11)).

(4) *Whether work of requisite value has been carried out.*—Within twenty-eight days after the service of the notice of increase, accompanied by the declarations, the tenant may apply to the county court to determine whether work of repair has been carried out on the dwelling-house during the specified period to the specified value, namely, in twelve out of the previous fourteen months work of repair to the value of three times the statutory repairs deduction, or, where the notice of increase is served before 30th December, 1954, in three out of the past four years work of repair to the value of six times the statutory repairs deduction. The tenant is thus entitled to challenge the landlord's statement that the latter has carried out work of the requisite value during the necessary period. In this connection it may happen that the landlord has made some of his calculations relating to work done for the benefit of the dwelling-house according to the provisions of para. 7 of Sched. II to the Act of 1954. There are certain types of work such, for example, as repairs to a lift and repairs to central heating and hot water installations, which enure for the benefit of the dwelling-house and also other premises. Sub-paragraph (2) of the said para. 7 provides that work which enures for the benefit of the dwelling-house and also other premises, whether or not carried out on the dwelling-house, is to be treated as having been carried out on the dwelling-house to a value equal to such proportion of the value of the work as ought to be apportioned to the dwelling-house. There is no arbitrary method of apportionment, and the landlord will in the first instance have to do his best to apportion to the dwelling-house such proportion of the total work as he considers correct. The result of this apportionment will form part of the landlord's calculations of the total amount of work that he has carried out to the dwelling-house. It will therefore be open to the tenant to re-open any such apportionment and allege that it was excessive in favour of the dwelling-house in question.

If, on such an application by the tenant, the court is not satisfied that work of repair has been carried out as aforesaid, the court shall certify accordingly and thereupon the notice of increase shall be, and be deemed always to have been, of no effect (Sched. II, para. 4 (1)). On the application, it may become necessary for the court to determine the extent to which the landlord is or was responsible for repairs to the dwelling-house, and the determination of the court on that point shall be final and conclusive.

If an error or omission in a notice of increase or a declaration accompanying such a notice is due to a *bona fide* mistake by the landlord, the court may amend the notice or declaration by correcting any errors or supplying any omissions, on such terms and conditions as the court may direct (s. 25 (4)). Where proceedings are pending before a county court in which the validity of the notice or declaration is in question or is material, an application to the court to amend a notice of increase or accompanying declaration must be made in the course of those proceedings (r. 2 (2) (*a*) of the Rent (Restrictions) Rules, 1954).

The form of summons, on application for a certificate that work of repair requisite for repairs increase has not been carried out, is Form 20 in the Rent (Restrictions) Rules, 1954. The form of order on that application is Form 21 in those rules. For the fee payable on such application, see para. 8 of the County Court Fees (Amendment) Order, 1954.

Application to determine any question arising under para. 4 (1) of Sched. II to the Act relating to work of repair specified in a declaration accompanying a notice of increase shall be made to the court in the district of which the premises are situate (r. 2 (1) (*b*) of the Rent (Restrictions) Rules, 1954).

(5) *Certificate of Disrepair.*—On the service of a notice of increase or at any subsequent time, the tenant may apply to the local authority for a certificate that either or both of the conditions justifying an increase of rent are not fulfilled. Those conditions are (1) that the dwelling-house is in good repair; and (2) that it is reasonably suitable for occupation. If the local authority are satisfied that the dwelling-house fails to fulfil either or both of those conditions, the local authority shall certify in the prescribed form and the certificate is deemed to have been in force as from the application (s. 26 (1) of the Act of 1954). The form of certificate of disrepair is to be found in Sched. V to the Housing Repairs (Increase of Rent) Regulations, 1954. While the certificate is in force, no sum is recoverable by way of repairs increase. But the landlord may challenge that certificate by taking proceedings in the county court against the tenant for a sum which is recoverable by way of repairs increase or, to put it more clearly, would be recoverable by way of repairs increase if the local authority had not so granted a certificate of disrepair (s. 26 (2)). In those proceedings, the county court has jurisdiction to test the action of the local authority in granting the certificate of disrepair. If the landlord satisfies the court that he has fulfilled the conditions justifying an increase of rent, that is to say, that the house is in good repair and is reasonably suitable for occupation, the court must annul the certificate of disrepair and thereupon it is deemed never to have been in force. But if there has been undue delay on the part of the landlord in bringing the proceedings, the court may order that the certificate shall be deemed to have been in force until such date as may be specified in the order (s. 26 (3)).

It may happen that, after the local authority have given a certificate of disrepair, the landlord prefers not to challenge that certificate at once but to execute to the satisfaction of the local authority such work as requires to be executed in order that the dwelling-house shall fulfil both the conditions justifying an increase of rent. That work having been completed, the landlord may then apply to the local authority to revoke the certificate (s. 26 (4)). If the local authority refuse to revoke the certificate, the landlord may then take proceedings in the county court for the recovery of any sum by way of repairs increase and in these proceedings the landlord may satisfy the court that both the conditions justifying an increase of rent have been fulfilled. If the court is so satisfied then it must order that the certificate shall cease to be in force and may order that it shall be deemed not to have been in force after such date, not earlier than the date of the application, as the court may specify (s. 26 (5)).

(6) *Proportion of repairs increase payable by sub-tenant.*—Where the landlord of a dwelling-house is entitled to recover from the tenant of the dwelling-house any sum by way of repairs increase, and there is a sub-tenant of those premises, the tenant may pass on that increase, or part of it, to his sub-tenant. In order to do that, the tenant must serve on the sub-tenant a notice of his (the tenant's) intention to increase the rent. The form of notice of passing on of repairs increase is to be found in Sched. III to the Housing Repairs (Increase of Rent) Regulations, 1954.

Where the sub-tenant occupies the whole of the dwelling-house, he must pay the full amount of the repairs increase to the tenant. Where the sub-tenant occupies part only of the dwelling-house, he must pay the tenant an amount equal to the *just proportion* of the repairs increase. The just proportion may be determined by agreement in writing between the tenant and the sub-tenant or, on the application of either of them, by the county court (s. 28 (1), (2) of the Act of 1954). The determination of the county court on this point is final (s. 32). The form of summons on application to determine the just proportion of repairs increase recoverable from a sub-tenant is Form 22 in the Rent (Restrictions) Rules, 1954, and the form of order on that application is Form 23 in those rules. As to venue, such an application must be made to the county court in the district in which the premises are situate (r. 2 (1) (*c*) of those rules).

It is expressly provided that s. 26 of the Housing Repairs and Rents Act, 1954, shall with the necessary modifications apply to such sums recoverable by a tenant from his sub-tenant as it applies to sums recoverable by way of repairs increase (s. 28 (4)). Now s. 26 deals with the certificate of disrepair, and, therefore, when a tenant passes on the repairs increase, or a proportion of it, to the sub-tenant, the latter is entitled to apply to the local authority for a certificate of disrepair on the grounds that the premises (i.e., that part of the premises occupied by the sub-tenant, which may be the whole house or only a portion of the house) are not in good repair and/or not reasonably suitable for occupation. If the local authority grant the sub-tenant a certificate of disrepair, his immediate landlord (i.e., the tenant who has been passing on the repairs increase or a proportion of it to his sub-tenant) may challenge the certificate by taking proceedings in the county court against the sub-tenant for the recovery of a sum by way of repairs increase, and in those proceedings the landlord may satisfy the court that the dwelling-house is in good repair and is reasonably suitable for occupation. If the court is so satisfied, it must revoke the certificate of disrepair. Or the tenant (i.e., the immediate landlord of the sub-tenant) need not challenge the certificate of disrepair in the first instance, but he may carry out the necessary works to put the premises in a state of good repair and reasonably suitable for occupation and then apply to the local authority to revoke the certificate. If the local authority refuse to revoke the certificate, the tenant may challenge that refusal by taking proceedings in the county court against the sub-tenant for the recovery of any sum by way of repairs increase. This matter is discussed above under "Certificate of Disrepair."

(7) *Rescission or variation of an order or judgment under s.* 33 (6) (*a*).—This requires a short explanation. Section 33 of the Housing Repairs and Rents Act, 1954, frees from control all houses belonging to local authorities and houses

built by development corporations under the New Towns Act, 1946, and houses owned by housing associations and houses belonging to a housing trust. Now s. 3 (2) (*c*) of the Rent and Mortgage Interest Restrictions Act, 1939, excluded from the Rent Acts houses belonging to local authorities which would otherwise have come within "new control." Paragraph (*c*) of s. 3 (2) aforesaid has now been repealed by s. 54 (4) of and Sched. V to the Housing Repairs and Rents Act, 1954. The relevant provisions of the two above-mentioned statutes are not identical in terms or operation. It is, therefore, provided that where any order or judgment has been made or given by a court before the 30th August, 1954, but has not been executed, and in the opinion of the court the order or judgment would not have been made or given if s. 33 of the Housing Repairs and Rents Act, 1954, had been in operation at the time when the order or judgment was made or given, the court may upon application by the tenant rescind or vary the order or judgment in such manner as the court thinks fit for the purpose of giving effect to this section (see s. 33 (6) (*a*) of the Act of 1954). As to the procedure on an application by a tenant to the county court for the rescission or variation of such an order or judgment, see r. 3 of the Rent (Restrictions) Rules, 1954.

(8) *Apportionment of gross value of a dwelling-house.*—Where the premises form part of larger premises and are not separately rated, the gross value must be ascertained by apportioning the gross value of the larger premises. The apportionment may be determined by agreement in writing between the landlord and the tenant, or, in default of agreement, by the county court on the application of either of them (s. 49 (3) of the Housing Repairs and Rents Act, 1954). The determination of the county court on this matter is final and conclusive (s. 32).

M.

Landlord and Tenant Notebook

COMPENSATION FOR IMPROVEMENTS TO BUSINESS PREMISES: THE AMENDMENTS

STATUTORY provisions for compensating business tenants for improvements, introduced by the Landlord and Tenant Act, 1927, and amended by the Landlord and Tenant Act, 1954, contrast in many respects with the older provisions affecting tenant farmers now contained in the Agricultural Holdings Act, 1948. The whole approach is seen to be different when one considers that the agricultural legislation is more elaborate and that it classifies improvements. Under the Landlord and Tenant Act, 1927, the only indication of what is intended is the parenthetical "including the erection of any building" in s. 1 (1). Beauty is in the eye of the beholder, and there is nothing either good or bad but thinking makes it so; and while there has been no definite decision under this legislation showing whose optical reactions or cerebral processes are to determine the question, there are *dicta* (*National Electric Theatres, Ltd.* v. *Hudgell* [1939] Ch. 553) and decisions on what is meant by "improvements" in s. 19 (2) of the same Act, dealing with covenants against making such (*Balls Bros., Ltd.* v. *Sinclair* [1931] 2 Ch. 325 (C.A.); *F. W. Woolworth & Co., Ltd.* v. *Lambert* [1937] Ch. 37 (C.A.)), which strongly support the view that, subject to safeguards, it is the tenant's opinion that matters.

It has been said that the Landlord and Tenant Act, 1927, achieved very little; this because of the qualifications, and because of the requirements which had to be satisfied before any claim could be substantiated. Having to serve a notice accompanied by a specification and plan would alone put many a tenant off.

The success of such legislation ought not to be measured by the amount of litigation it produces, however; and it is fairly safe to say that knowledge of its existence would induce many landlords to enter into agreements more readily than they would otherwise have done. And if tenants think that the amendments brought about by the Landlord and Tenant Act, 1954, have done away with a lot of troublesome obstacles they are much mistaken. Of the three sections concerned, only two of the three subsections of one section really relax the requirements and restrictions.

They are s. 48 (2) and (3). The one does away (as regards improvements begun since October last) with the exclusion of improvements made within the last three years of a tenancy. The words in which that limitation was expressed are: "A tenant shall not be entitled to compensation under this Part of this Act . . . in respect of any improvement made less than three years before the termination of the tenancy." According to one authoritative writer, this meant that a tenant from year to year would never be able to take advantage of the enactment; I am not so sure that this is right, and suggest that if the term in fact continued for three years or more, he would not be precluded from claiming compensation. But, there being no security of tenure, effecting an improvement with a view to a claim would be a speculative undertaking.

Section 48 (3) abolishes one of the possible bars to a claim: it was open to a landlord, within two months after such was made, to serve a notice offering a renewal of the tenancy at such rent and for such term as, failing agreement, the tribunal might consider reasonable; the tenant had one month in which to consider the offer. This provision hardly seemed to be in keeping with the general object, which, while not fairly described as being to enable the tenant to reap what he has sown, could be said to be that of preventing the landlord from reaping what he had not sown. A notice to a tenant known to be about to retire from business might well enable the landlord to enjoy benefits of which the Legislature intended to deprive him.

It is rather difficult to assess the importance of the first subsection of s. 48; this does away with the exclusion of improvements made "in pursuance of a statutory obligation" and the landlord's right to object to such, and cannot affect many people.

Section 49 now imposes an absolute prohibition on contracting out of the provisions for compensation for improvements, which was permissible, under the 1927 Act, subject to there being adequate (not, as one textbook has said, valuable) consideration. The change is made effective as regards any contract made since 9th December, 1953. The tribunal, which formerly had the task of deciding the question of adequate consideration, will not be troubled with such matters in future.

The most important change concerns time for making claims and has been necessitated by the security-of-tenure provisions of Pts. I and II of the Act. For, while not every tenant who stands to benefit by that Pt. II, with its wide definition of business (s. 23 (2)), can qualify for compensation

for improvements, it is fair to say that most can; and not every tenant to whom the compensation for improvements provisions of the Landlord and Tenant Act, 1927, apply is a tenant protected by the Landlord and Tenant Act, 1954, Pt. II, from which Rent Act protected premises are excluded (s. 43). Now under the 1927 Act the claim had to be made (in the prescribed manner) within one month of the service of notice to quit in the case of periodic tenancies, between thirty-six and twelve months *before* term expired in the case of fixed terms.

Both periodic tenancies and fixed terms are now covered by the "shall not come to an end unless terminated in accordance with the provisions of this Part of this Act" of s. 24 (1), and apart from those provisions there is the right of any tenant holding for a term of years exceeding one year to make a request for a new tenancy. Briefly, the position is that a landlord's notice to terminate must be at least a six months' notice; a tenant (s. 25) holding under a periodic one can give notice in accordance with his agreement (s. 24), a tenant holding for a fixed term must give three months' notice (s. 27); the request for a new tenancy has to be made six months before the term expires or could be terminated by notice given by the tenant (s. 26).

Section 47 deals with the situation by introducing, first, a new period of three months from date of notice for the making of a claim for compensation for improvements whenever a tenancy is terminated by *notice to quit* or *notice to terminate*. This will cover most cases, but provision is then made for that of a tenant's request for a new tenancy, to which a landlord may react in various ways; and if he notifies his intention to oppose any application, any claim for compensation for improvements is to be made within three months from his notice; if he does not notify such intention, within five months from the making of the request. Next, the minimum time for making a claim in the case of such tenancies as can terminate by effluxion of time is three months before the expiration. And lastly, "forfeiture or re-entry" is specially dealt with, the tenant being given three months running from actual re-entry without proceedings, or from the "effective date" when such are taken: and this means either the date named in the order or the last possible date for entering an appeal, whichever is later.

R. B.

HERE AND THERE

PILTDOWN AGAIN

IT was just about this time last year that the Piltdown Man crashed so resoundingly from the topmost branch of our family tree and in his fall disarranged a whole section of anthropological science. His fall illustrates very well indeed why, quite literally, one should not take scientific research too seriously. Round a relatively restricted area of certainty there stretches a vast debatable territory where in tangled forests and uncertain twilight range a whole zoology of wild conjectures, inferences and hypotheses. To those who would hunt them down and tame them the terrain opposes every sort of unpredictable pitfall. And, curiously enough (or so it will seem to the earnest scientific investigator), humour is by no means a negligible hazard. It was said of Tim Healey that he would rather lose a friend than miss making a joke. And even among Englishmen there are those who would prefer a good practical joke to a solemn scientific truth any day of the week. For those to whom science is a sort of sacred cow this is blasphemy, but it is a blasphemy with which they must reckon in their researches, and it is possible that if they had reckoned with it in this particular case the grin might not now be quite so broad on the enigmatic features of the Piltdown skull.

MAN OF MYSTERY

THE man behind the skull, you will remember, was a solid respectable Sussex solicitor practising at Uckfield. "Unassuming," "thoroughly honest" and "very painstaking" were the epithets which occurred to his friends in describing him. They might almost stand as the definition of the ideal trustee. So when in 1912 he produced to the world the remarkable composite cranium and jaw bone brought to light a couple of miles from his professional headquarters everybody took it on trust at, so to speak, its face value. So, convincingly vouched for, it settled down for the next forty years as the face that launched a thousand fallacies. Charles Dawson was forty-eight at the time the Piltdown find assured him anthropological immortality. He could be alive to-day, a respected patriarch of The Law Society, and it is rather a pity that he is not, for then he could explain himself, and his explanation could not but be entertaining, whatever it was. In fact, he died at the age of fifty-two, leaving no clue to the hidden enigma. Now that the Piltdown Man has been put in his place, the ghost of Dawson takes the centre of the stage. Is he to the world of anthropological science what Van Meegeren was to the world of picture dealing? Was he the hoaxer or the hoaxed? Had he an intelligible motive or an obscure motive or no motive at all? An undergraduate who carried through an elaborate hoax at Oxford recently said that he did not know why he did it, adding: "It is the sort of thing one does at Oxford, I suppose." Archæologists will become a trifle sceptical of Downland discoveries if they begin to suspect that the Piltdown business is "the sort of thing one does in Sussex, I suppose."

FURTHER CONSIDERATION

DURING the past year, the archæological detectives have been on the track of the mystery. In the spring there will appear a book on "The Piltdown Forgery," by Dr. J. S. Weiner, Reader in Physical Anthropology at Oxford University. Unlike the British Museum's bulletin on the matter, it will not avoid personal accusations in its assessment of methods and motives. Meanwhile, more sidelights have been turned on the personality of Charles Dawson in the annual report of Mr. J. Manwaring Baines, curator of the Hastings Museum, where his private collection of antiquities, purchased from his widow after his death, is housed. Some of the items have now been examined rather more critically than formerly, and consequently stand under a cloud of suspicion. That little axe head, did it really come from the slag heap at Beauport, where the Romans had an ironworks? And that statuette, which Mr. Dawson claimed as the earliest specimen of cast iron in Europe, was that also from Roman Beauport or a fairly recent continental production? That small anvil dated 1515, did it ring quite true? The museum is haunted by the Piltdown ghost, which is not likely to be easily laid. Nor does Mr. Dawson's two-volume history of Hastings seem to be expected to play any part in its exorcism. Since 1909 it has enjoyed the prestige of a standard authority, but a few months ago a local bookseller discovered a manuscript volume by a far earlier antiquarian, William Herbert, who flourished in the eighteen-twenties. Behind a certain amount of rearrangement and some additions, manuscript and history

turned out to be identical. Certainly Dawson's preface did not exaggerate when it said that he had made "full use" of Herbert's work. Of course, one must not deduce too much against him from that. Plenty of wealthy, successful and illiterate men borrow the pens of impoverished writers to produce books in their names, though they do not need the royalties and it is hard to see how the transaction bolsters their self-esteem. No one, certainly, would think of suspecting them of forgery on the strength of that sort of literary sleight of hand. So, pending further revelations, judgment on Mr. Dawson's Piltdown exploit must still be reserved. If it was indeed all his own work and not the masterpiece of some humble craftsman for ever anonymous, one hopes that a thing so uncommon was not produced for the commonplace vanity of temporary celebrity. If it was, it compassed far more than its purpose and achieved immortal laughter.

RICHARD ROE.

REVIEW

Key and Elphinstone's Precedents in Conveyancing. Fifteenth Edition. Volume 3. Registered Land. By HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. Edited by THOMAS IVOR CASSWELL, B.A., a Registrar in H.M. Land Registry. 1954. London: Sweet & Maxwell, Ltd. Three volumes, £15 15s. net.

The third volume of the new edition of Key and Elphinstone's Precedents in Conveyancing contains a preliminary treatise on the Principles affecting Registered Land and the Practice of Registered Conveyancing occupying 349 pages, and 230 pages of Forms and Precedents. The preliminary treatise first appeared in the fourteenth edition, being written by the late Dr. Potter and based on his work on the principles and practice of registered land conveyancing published six years earlier. The new edition reproduces Dr. Potter's treatise with additions and alterations rendered necessary by decided cases and changes in practice. The learned editor states: "Dr. Potter was well known for his original views and the present editor has not been able on all occasions to avoid differences of opinion. In matters of substance he has considered it preferable to give both Dr. Potter's opinion and his own reasons for differing from it, rather than, by simply altering the text, to appear to fasten on to Dr. Potter views which were not in fact his." The preliminary treatise is a full and complete exposition of the principles of registered conveyancing. It is, however, discursive in style and academic in substance, and its suitability for a book intended for use by practical conveyancers is open to question. The text of the Act and rules is not reproduced, and a copy of the Act and rules will be an indispensable adjunct for a proper understanding of the rules.

The discussion, on p. 24, of the position where the right of redemption in a mortgage term has ceased to subsist and there is a head term outstanding to which the mortgagee is entitled in equity is hardly intelligible. It is stated that "the amendment to the Law of Property Act, 1925, seems difficult to apply." No reason is given for this opinion, nor is there any clue to the nature of the amendment. Research reveals that the enactment referred to is para. 7 (*m*) of Pt. II of Sched. I to the Law of Property Act, 1925, which was amended by the Law of Property (Amendment) Act, 1926. The case of *Peachy* v. *Young* [1929] 1 Ch. 449 might usefully have been cited.

On p. 29 the effect is discussed of r. 251, whereby registration vests in the proprietor all rights, privileges and appurtenances appertaining or reputed to appertain to the land, including the appropriate rights and interests which, had there been a conveyance of the land, would have passed under s. 62 of the Law of Property Act, 1925. The author comments: "On the surface this would appear to make registration a statutory conveyance operating to crystallise rights which previously had not existed, because, of course, this is in fact the effect of s. 62, which confers upon the grantee an express grant of rights which previously had not been appurtenant to the land. What is difficult in r. 251 is to see how it can apply to a proprietor who is not a transferee (and transferees are covered by s. 20 of the Act), since it is hard to see how any reputed rights enjoyed at the date of registration would be crystallised into legal rights merely by the fact of registration, unless a quasi-easement or quasi-profit over unregistered land could be created an easement by the registration of the quasi-dominant tenement, although the unregistered land was also vested in the registered proprietor. It is suggested that there is nothing in the Act to warrant so far-reaching a construction, but that the rule may have application where the registered proprietor is registered upon an application based on his right to call for the legal estate which, in fact, had never been vested in him." These comments seem to be based on a misconception of the operation of s. 62 of the Law of Property Act, 1925. That section has its baleful effect where the owner of the quasi-servient tenement, being also the owner of the quasi-dominant tenement, conveys the latter to another person (see *International Tea Stores Company* v. *Hobbs* [1903] 2 Ch. 165, 171). But on first registration the "statutory conveyance"—assuming that r. 251 creates one, which is open to doubt—is a conveyance by the applicant to himself and such a conveyance could neither create an easement over the applicant's own land (for such an easement is unknown to the law) nor affect the rights of other persons. Indeed, by s. 62 (5), the section is not to be construed as giving to any person any right further than the same could have been conveyed to him by the conveying parties. One may, therefore, accept the view that on first registration r. 251 does not "crystallise" into legal rights rights which had not previously existed. But the conclusion drawn that the operation of r. 251 is confined to cases where the application for first registration is based on the applicant's right to call for the legal estate is difficult to support. There seems to be no doubt that the note to r. 251 in Brickdale and Stewart-Wallace, Land Registration Act, 1925, 4th ed., p. 442, is correct. The note states: "This rule defines and declares 'the appropriate rights and interests . . . under the Law of Property Act, 1925,' which are by s. 20 (and 23 as to leaseholds) vested in the registered transferee of land and extends them to all registered proprietors, whether transferees or not (s. 144 (1) (xiii) of this Act)."

The effect of s. 69 (4) of the Land Registration Act is discussed at length on p. 35 *et seq.* of the new volume, which reproduces pp. 34 to 38 of vol. 3 of the fourteenth edition, except that on p. 36 of the new volume a long passage expressing Dr. Potter's views is now relegated to a footnote. It is not clear whether the present editor concurs with or differs from Dr. Potter's views, and a conveyancer will find it difficult to get any helpful guidance from the discussion.

The Forms and Precedents have been revised by the present editor, Mr. Casswell, a registrar in H.M. Land Registry, and appear to meet all the ordinary requirements of conveyancers. It is, however, open to doubt whether the precedents for transactions affecting land already on the register would not be more conveniently placed under the appropriate title in vol. 1 or 2. After all, in matters of substance the points to be considered and the forms to be used are usually the same whether the land is registered or not. And it would be unwise to use the precedents in vol. 3 without study of the admirably clear and concise notes in vols. 1 and 2.

A separate title of "Applications for First Registration," with a concise preliminary note in the style traditional in Key and Elphinstone and the appropriate forms would be useful. But it is suggested that the precedents of instruments affecting land already registered would be more useful if incorporated in vols. 1 or 2, and presumably this would enable the cost of the complete work to be substantially reduced. Finally, it must be said that any practitioner who has the patience and time to study Dr. Potter's treatise in vol. 3 will be well equipped to grapple with all problems likely to arise in connection with registration of title to land.

The Queen has approved the appointment of Mr. JOCELYN EDWARD SALIS SIMON, Q.C., M.P., as a member of the Royal Commission on the Certification and Detention of Mental Patients in the place of Sir Harry Hylton-Foster, Q.C., M.P.

Mr. NIGEL W. SMYTH, O.B.E., solicitor, of London, E.C.4, London, W.C.1, Thornton Heath and Liverpool, has been co-opted a member of the Committee of Management of the Royal National Lifeboat Institution.

TALKING "SHOP"

November, 1954

WEDNESDAY, 3RD

It has been a bad autumn on the legislative front, and it is a long time since I have been so much bemused by new conveyancing legislation. The Town and Country Planning Act, 1947, and its multitudinous progeny of statutory instruments—these admittedly were no laughing matter, except, as I am told, in certain Welsh districts, where, with rugged unconcern, solicitors ignored the whole business by mutual consent. But with a little determination it was not difficult to grasp the general principle of such novelties as development charge. It was even possible to set up as a minor pundit on the general principle that—*pace* H. G. Wells—in the kingdom of the blind the one-eyed man is king. And clients, with a few notable exceptions, knew little about it and, in the contemporary phrase, "couldn't care less."

Now we have the Housing Repairs and Rents Act, 1954, and the Landlord and Tenant Act, 1954, taking effect respectively from 30th August and 1st October last. Doubtless, in time the pair of them will become as familiar as the Landlord and Tenant Act, 1927, ever was. For the present, jointly and severally, they tend to induce in me a strong sense of bewilderment. Should there be any reader in like case (though even to suggest it may be a presumption) I hope he will pay no attention at all to my heartless skit last month and will instantly buy (at an inclusive cost of 1s. 4d.) the admirable green, yellow and orange pamphlets issued by H.M. Stationery Office. The first of these deals with the Housing Repairs and Rents Act, the second with security of tenure of business premises, and the third with "houses held on ground lease." All are of a convenient size to be concealed about the person or in the interstices of the blotter if the exigencies of the service require.

The two Acts are perhaps (though I do not assert it) simple enough in their main features—simple, that is, if each subject is studied separately. What is so confusing is the similarity of subject and method at several points which makes it difficult to distinguish the herrings in the shoal. For example, the provisions for security of tenure of business tenants (see yellow book) strongly resemble those relating to the protection of sitting tenants under so-called ground leases (orange book), but the two types of protection are in fact mutually exclusive. Again, both Acts are inevitably peppered with those part-substantive and part-procedural provisions of the dreariest type, all bearing a close family resemblance—notices from landlord to tenant, counter-notices and the rest of it, impossible to remember but unsafe to ignore. And finally, there is the ever-mounting nuisance of fitting these newcomers into the Rent Acts shoe, now full to overflowing with the lusty offspring of the Mother of Parliaments. Some of them, by the way, attained their majority years ago, including the principal Act of 1920, but they are still there. It is not for mere conveyancers to stand in the way of social reform, but strictly within office hours they may occasionally be heard to intone the refrain of the old song—*don't have any more, Mrs. Moore.*

THURSDAY, 4TH

After such a lengthy repining over the new legislation, nobody will expect me to say anything useful on the subject, but I will venture on two brief points. Both I believe to be practical since they have already arisen in the office.

First, such is the paraphernalia of the "repairs increase" (see green book)—with its statutory repairs deduction and "stopper" and expenditure tests and option for the landlord to elect against internal decoration—that it may easily blind one to the importance of the "services increase" (s. 40 of the Housing Repairs and Rents Act, 1954). Plenty of notices have already been served by landlords of big blocks of flats, and it is noteworthy that the "services increase" (including, as I have observed, some fabulous sums for heating) is often much larger than the "repairs increase."

Secondly, if s. 35 of the Housing Repairs and Rents Act, 1954, means what I think it does, it is surprising that it has not aroused more comment. It is surely no small thing that (except where a grant has been made under the Housing Act, 1949) new houses and conversions completed after 30th August last are now scot-free of the Rent Acts? (The text of subs. (1) says that *the Act of 1920* shall not apply and the side-note says "exclusion from *Rent Acts*"; the result, presumably, is the same.) Since the date of completion of the building or conversion is made the critical date for exemption (subs. (2)) maybe the architect's final certificate is now a document of record and should be kept with the title deeds.

If these houses (or flats, as the case may be) become controlled by future legislation, one wonders what may result from low rents (if any) charged in the interim period of decontrol, or, more accurately, initial non-control. Will the landlord have unwittingly set himself a standard rent, or will the Legislature take care of that? There is a precedent of a kind in s. 45 of the 1954 Act (letting of accommodation under reg. 68CB not to establish a standard rent), and this incidentally disposes of a point that I mentioned in this Diary at 97 SOL. J. 809. Regulation 68CB is remarkably tough, and like a certain monarch it is taking an unconscionable time to die.

TUESDAY, 9TH

Perhaps it is a sign of the times that the only questions put to me by an intending husband on his draft marriage settlement were (*a*) "What happens if I have an only child who is 'queer'?" and (*b*) "What happens if the marriage comes to an end for reasons other than death?"

I mentioned this to another solicitor, and he tells me that the same question about a "queer" child was put to him by an intending husband recently. He advised the client not to have a "queer" child, or, alternatively, to have at least one other and normal child to whom the fund could be appointed under the standard special power. My solution was different—an overriding general power, but then the circumstances were not the same.

As to question (*b*), I fear I was brutal enough to say "You mean, of course, a divorce," and advised accordingly. Strange how we lawyers are always charged with employing language to conceal meaning! Yet we are seldom heard to state that our clients "terminate their marriages for reasons other than death" nor that they pass over or away: they are divorced or die.

WEEK-END REFLECTIONS

Sitting beside a gentleman in the train who was suffering from a violent cold in the head, I was moved to address him (but alas, in thought only, such are the inhibitions of the age) in the following terms:—

> My dear sir, are you not conscious that we are both members of a highly organised and regimented community, sustaining and sustained by the Welfare State? If you were to strike me over the head with your umbrella, you

would be guilty of assault and battery; in the field of civil action I believe it would constitute a trespass. But if you did not hit me too hard I could go to the office as usual, shaken perhaps but still fit for my day's work and little the worse to-morrow; in fact it is probable that my condition would improve from day to day.

I regret that instead of adopting this open and virile course you elect to steal upon me unawares, taking advantage of the halting process of our antique law of tort. Instead of bashing me with your umbrella (which I would much prefer) you repeatedly project over me a fine cloud of globular spray. By so doing you incapacitate me for a fortnight, and not only myself but my wife and children. We are lucky if we suffer nothing worse than the common cold and if we do not in turn pass it on to others. The children will be away from school, my wife will be away from the kitchen sink and I shall be away from my practice: it is not good enough.

Now let me tell you, sir, what the law ought to be (and perhaps is, though the House of Lords have yet to declare it so)—that your cold is actionable in trespass, negligence and nuisance. On the whole, I think that you are a public nuisance as well as a private nuisance, but I must look that up. You well knew that by travelling in public transport with a heavy cold you would infect large numbers of the public and cause widespread annoyance, sickness and distress. But you did not care, and you must take the consequences.

You might have guessed about negligence and so on, but I will leave it to your lawyer to tell you more about *Rylands* v. *Fletcher* when you are served with my writ: "We think that the true rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes must keep it in at his peril, and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape." That comes straight out of Clerk & Lindsell on Torts,[1] and please do not prevaricate with fine distinctions between dangerous things on land and dangerous germs in the body. The principle has been aptly described[2] as "the wild beast theory"; it is the principle that counts and not the volume of the creature nor its exact scientific classification. *De minimis non curat lex* applies, in brief, to your arguments but not to your vagrant and mischievous microbes.

It is possible that my wife will also sue you for loss of my consortium, but as she is likely to be seeing more of me than usual whilst I shake off *your* cold no decision on this point can be reached at present. "ESCROW."

[1]Ninth Edition, at p. 478.

[2]*Ibid.* *Per* Russell, C.J., in *Price* v. *South Metropolitan Gas Co.* (1895), 65 L.J.Q.B. 126.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

AUSTRALIA: COMPULSORY ACQUISITION: STATUTE WORKABILITY

Pye and Others *v.* Minister for Lands for New South Wales:

Lord Porter, Lord Oaksey, Lord Reid, Lord Tucker and Lord Asquith of Bishopstone. 4th November, 1954

The question in this appeal from an order of the High Court of Australia dated 10th March, 1953, was as to the proper measure of compensation to be paid in respect of the resumption of land in New South Wales which was formerly the freehold property of the appellants, but was resumed by the Governor of New South Wales on 1st September, 1950, under the provisions of the Closer Settlement (Amendment) Act, 1907, as amended by subsequent Acts. The land was resumed for the purposes of s. 3 of the War Service Land Settlement Act, 1941, and the substantial question in this appeal was whether the compensation payable to the appellants was to be based on the value of the land as at 10th February, 1942, or on its current value at or about the date of resumption, which admittedly very greatly exceeded the value in February, 1942. The proviso to s. 4 (4) (*b*) of the Closer Settlement (Amendment) Act, 1907, as amended, enacted that: "(i) in the case of any such resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board the value of the land as so assessed shall not exceed by more than 15 per cent. the value which would have been so assessed or determined in respect of an identical resumption as at the 10th day of February, 1942 . . .; (ii) in the case of any such resumption other than a resumption where the owner has agreed not to claim compensation in excess of the value of the land as assessed by an advisory board, the value of the land as so assessed or determined shall not exceed the value which would have been so assessed or determined in respect of an identical resumption as at the 10th day of February, 1942, . . ." The High Court of Australia, on construction of the provisions of the Act, as amended, held that the value as at 10th February, 1942, was the correct figure. The appellants appealed.

LORD PORTER, giving the judgment, said that their lordships agreed with the decision of the High Court. That decision depended entirely on the construction of the Closer Settlement Act as now amended, and the Act in its present form must be read as a whole. In reaching a conclusion as to the meaning to be placed on an Act it must always be remembered, as Lord Dunedin stated in *Murray* v. *Inland Revenue Commissioners* [1918] A.C. 541, at p. 553: "It is our duty to make what we can of statutes, knowing they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a judge to declare a statute unworkable." The gravamen of the charge that the present Act was unworkable lay in two contentions: (1) That the compensation was to be determined by the advisory board in its report before the purpose of the resumption was finally determined by the Governor and confirmed by Parliament; and (2) that the owner must be given an opportunity of electing to accept the value in the report or rejecting it and no such opportunity could be or had been given in the present case. The first contention technically presented some difficulty, but in practice no actual difficulty had been encountered. The advisory board obviously knew of the intention of the Minister and assessed the compensation accordingly, and the requisite steps prescribed by the Act were taken in due course. There was no justification for the view that the advisory board could not know the purpose of the resumption until it had finally been effected, for while it was true that the Minister prescribed the general area from which a choice of the land to be resumed was made, the advisory board were the body by whom both the actual land to be resumed and its value were to be determined. They therefore (1) knew when they were making their report the purpose for which the land was to be resumed and the owner; (2) could make their assessment of value on that basis; and (3) could give the owner his option under the proviso to s. 4 (4) (*b*) of electing to accept or reject the value in the report. The objection was theoretical only, for in fact the advisory board do, and in the present case did, know both the purpose of the resumption and the owners concerned. As to contention (2), a submission that the advisory board had failed to give the appellants an opportunity of electing formed no part of the case stated by the Land and Valuation Court, and even

if it did the appellants, having proceeded to that court, could not now retain the right to contend that the option given by s. 4 (4) (*b*) was still open to them to exercise. Appeal dismissed. The appellants must pay the costs incurred by the respondent before their lordships' Board.

APPEARANCES: *Sir Garfield Barwick*, Q.C. (Australia), *J. G. Le Quesne* and *J. E. Saywell* (*Waterhouse & Co.*); *M. F. Hardie*, Q.C. (Australia), *R. Else Mitchell* (Australia) and *Anthony Cripps* (*Light & Fulton*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 1410**

DIVORCE: CONSTRUCTIVE DESERTION: INTENTION: CONFLICTING DESIRE

Lang *v.* Lang

Lord Porter, Lord Oaksey, Lord Reid, Lord Tucker and Lord Asquith of Bishopstone. 10th November, 1954

This was an appeal by Eric Lang, by special leave, from a judgment of the High Court of Australia dated 23rd February, 1953, dismissing his appeal from a judgment of the Supreme Court of Victoria dated 22nd September, 1952, by which a decree *nisi* of dissolution of marriage was granted to the respondent, Mrs. Jean Wauchope Lang, on the ground of the appellant's constructive desertion. The parties were married in South Australia in 1924. Under the Marriage Act, 1928, of Victoria, desertion for three years and upwards was a ground for divorce.

LORD PORTER, giving the judgment, said that there were, in effect, concurrent findings that the husband grossly ill-used and insulted his wife over a period of five years and gave her ample justification for leaving him. In order to succeed she had to establish what was described as constructive desertion. The question was what the husband intended, or must be taken to have intended, while so conducting himself. If a man deliberately made his wife's life unbearable according to an objective standard, that was, the reasonable man's reactions, was he conclusively presumed to intend to drive her out—the presumption that a man intended the natural and probable consequences of his acts being treated as irrebuttable? In England that view found expression in *Sickert* v. *Sickert* [1899] P. 278 and *Edwards* v. *Edwards* [1948] P. 268. The other view, which was embodied in the English decision in *Boyd* v. *Boyd* (1938), 55 T.L.R. 3, and in certain observations in *Bartholomew* v. *Bartholomew* [1952] 2 T.L.R. 934; [1952] 2 All E.R. 1035, was that no matter how reprehensible had been the husband's behaviour, if there was positive and credible evidence negativing any actual intention on his part to end the marriage, the law would not impute such an intention to him. The conflict of opinion in the English cases appeared again in *Simpson* v. *Simpson* [1951] P. 320, where the view expressed in *Edwards* v. *Edwards*, *supra*, was repeated, and in *Pike* v. *Pike* [1954] P. 81 (*n*), where the Court of Appeal reaffirmed the propositions expressed in *Hosegood* v. *Hosegood* (1950), 66 T.L.R. (Pt. 1) 735, at p. 738. So far as the Australian cases were concerned there was not, as their lordships apprehended, so marked a dichotomy, but the distinction between the instances in which desertion had been held to have been established and those in which the facts had been held to afford insufficient proof was a fine one. *Prima facie*, a man who treated his wife with gross brutality might be presumed to have intended the consequences of his acts. The court was at least entitled, and indeed was driven, to draw such an inference unless convincing evidence to the contrary was adduced. That was the proper approach to the problem and it must, therefore, be determined whether the natural inference had been rebutted in the present case. *Bain* v. *Bain* (1923), 33 C.L.R. 317, at p. 325, went to the root of the matter. A man might have an intention which conflicted with a desire. What, then, was the legal result where an intention to bring about a particular result (be it proved directly or by inference from conduct) co-existed with a desire that that result should not come about? That was the substantial point raised by this appeal. The issue might be put more concretely. What legal inference was to be drawn where the whole of a husband's conduct was such that a reasonable man would know—that the particular husband must know—that in all human probability it would result in the departure of the wife from the matrimonial home? Apart from rebutting evidence that, in their lordships' opinion, was sufficient proof of an intention to disrupt the home. Was a court to say that if he did entertain an unjustified hope that his wife would stay, the intention normally to be inferred from his acts was rebutted, and was the correct conclusion that he did not intend to drive her out? In their lordships' opinion no such conclusion was justified. If the husband knew the probable result of his acts and persisted in them, in spite of warning that the wife would be compelled to leave the home, that was enough, however passionately he might desire or request that she should remain. His intention was to act as he did, whatever the consequences, though he might hope and desire that they would not produce their probable effect. In the present case no sufficient ground had been given for rejecting the finding of the High Court. Appeal dismissed.

APPEARANCES: *James Stirling*, *B. Buller-Murphy* (Australia) and *B. J. Wakley* (*Blyth, Dutton, Wright & Bennett*); *J. E. S. Simon*, Q.C., and *John Latey* (*Davenport, Lyons & Barker*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 762**

EXPERT EVIDENCE: FOREIGN LAW: "SPECIALLY SKILLED" AND EXPERIENCED LAYMAN

Said Ajami *v.* Comptroller of Customs

Lord Morton of Henryton, Lord Keith of Avonholm and Mr. L. M. D. de Silva. 8th November, 1954

This was an appeal by Said Ajami from a judgment of the West African Court of Appeal dated 19th February, 1952, dismissing his appeal from a judgment of the Supreme Court of Nigeria dated 19th November, 1951, which had in turn dismissed his appeal from a judgment in the magistrates' court in favour of the respondent, the Comptroller of Customs of Nigeria. In the action out of which this appeal arose the respondent had claimed against the appellant a penalty of £61,778 2s. 6d. and the forfeiture of 9,884,500 French colonial franc notes on the ground that the appellant had, on 15th June, 1951, attempted to export the said notes, contrary to s. 22 (1) of the Exchange Control Ordinance, 1950, of Nigeria, which prohibited the exportation, *inter alia*, of "any notes of a class which are, or have at any time been, legal tender in the United Kingdom . . . or in any other territory." On this appeal the appellant did not dispute that he attempted to export 9,884,500 notes from Nigeria on the date in question; but he contended that the evidence led by the respondent in the magistrates' court did not establish that the notes in question were legal tender in French West Africa on 15th June, 1951. That was the sole point for decision on this appeal. The expert evidence called by the respondent was that of one Mr. Greenway, who stated in chief: "Manager, Barclays Bank, Kano, in banking business thirty-two years, twenty-four years in Nigeria, I look at these notes, they are to the best of my knowledge French colonial franc notes, they were legal tender in French West Africa on 15th June this year . . ." He was not cross-examined, and no evidence was led by the appellant to contradict what he said.

Mr. L. M. D. DE SILVA, giving the judgment, said that it had been argued that upon a matter which involved a question of law no person who was not a professional lawyer could be regarded as a competent expert. Their lordships did not agree. A principle which emerged from the authorities considered together was that not only the general nature, but also the precise character of the question upon which expert evidence was required, had to be taken into account when deciding whether the qualifications of a person entitled him to be regarded as a competent expert. So the practical knowledge of a person who was not a lawyer might be sufficient in certain cases to qualify him as a competent expert on a question of foreign law. There was nothing in ss. 56 and 57 of the Evidence Ordinance of Nigeria (which enacted in s. 56 that the evidence of a person "specially skilled" on a point of foreign law was admissible as expert evidence) which was opposed to the views stated above. Their lordships accepted the submission for the respondent that upon a fair view of the evidence as a whole it must be presumed that Mr. Greenway was speaking from adequate personal experience. His evidence must be held to have established the facts to which he deposed. It must be held that he was a person who in the course of his business had to, and did, keep in touch with current law and practice with regard to notes that were legal tender in French West Africa. The notes of which exportation was attempted must be held to have been legal tender in French West Africa on 15th June, 1951. Their lordships would humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the respondent the costs of this appeal.

APPEARANCES: *Ralph Millner* and *Biden Ashbrooke* (*Hatchett, Jones & Co.*); *B. J. M. MacKenna*, Q.C., and *D. A. Grant* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[1 W.L.R. 1405**

COURT OF APPEAL

CONTRACT: SALE OF WHEAT C.I.F.: TIME FOR PROVIDING BANK GUARANTEE

Sinason-Teicher Inter-American Grain Corporation *v.* Oilcakes and Oilseeds Trading Co., Ltd.

Denning, Birkett and Morris, L.JJ.

27th October, 1954

Appeal from Devlin, J. ([1954] 1 W.L.R. 935; *ante*, p. 438).

A contract made on 11th August, 1952, for the sale of Canadian barley c.i.f. Antwerp-Hamburg range provided for shipment during October/November, 1952, payment to be net cash in London upon first presentation of documents, the buyers to give the sellers through their London bank a guarantee that the documents would be taken up on first presentation. No time was stipulated in the contract as to the date of the guarantee. On 10th September the sellers purported to cancel the contract alleging that they were entitled so to do as the guarantee had not been received. On 10th September the buyers' London bank informed the sellers that an irrevocable letter of credit had been opened by the buyers in favour of the sellers, but the sellers maintained their refusal to carry out their obligations under the contract and on 16th September the buyers referred the matter to arbitration. It was found that the buyers' obligation was to provide the guarantee within a reasonable time before the first shipment date, namely, 1st October, 1952; that such reasonable time had not arrived by 10th September; that the sellers had wrongfully repudiated the contract; and that the buyers accepted the repudiation on 16th September, and were entitled to damages accordingly. By special case the following question was submitted for determination by the court: "Whether on the true construction of the documents and the facts as found the sellers were entitled to treat the contract as determined." Devlin, J., affirmed the decision of the arbitrators. The sellers appealed.

DENNING, L.J., said that the sellers' original view, now admitted to be wrong, was that they were entitled to be given the guarantee immediately after the making of the contract, and they had repudiated on that basis. They were now contending that the guarantee should have been given within a reasonable time. The buyers contended that their obligation was to provide a guarantee in reasonable time, which had not elapsed when the sellers repudiated. The correct view of *Pavia & Co. S.P.A.* v. *Thurmann-Nielsen* [1952] 2 Q.B. 84 was that if nothing was said about time in the contract, the letter of credit or guarantee must be produced within a reasonable time before the first date of shipment. The arbitrators had taken into account the time necessary for the buyers to obtain sterling guarantees from the German sub-buyers, and for the transaction to be submitted to the Bank of England for approval, and had held or found that a reasonable time had not elapsed when the sellers repudiated, and there was no error of law in their conclusions. The appeal should be dismissed.

BIRKETT and MORRIS, L.JJ., agreed. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *Ashton Roskill*, Q.C., and *T. G. Roche* (*Richards, Butler & Co.*); *Eustace Roskill*, Q.C., and *R. A. MacCrindle* (*Thomas Cooper & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1394**

DIVORCE: CRUELTY: DEFENCE OF INSANITY: MACNAGHTEN RULES

Palmer *v.* Palmer

Lord Goddard, C.J., Hodson, L.J., and Vaisey, J.

28th October, 1954

Appeal from Mr. Commissioner Grazebrook, Q.C.

The marriage took place in April, 1938, and was for some time a success but in 1946 the husband began to show signs of mental disability, and between that date and 1952 on two occasions he went into a mental home as a voluntary patient and later discharged himself. In 1952 he was finally certified as insane and had not left the mental hospital since. During the time when he was living at home, both before going to the mental hospital and after he came out, the husband had assaulted his wife on a number of occasions, in such a way as to entitle her to a divorce on the ground of cruelty. In his answer to the petition, the husband set up the defence of insanity alleging that at the time of the commission of the assaults he was not aware of the nature or quality of the acts alleged against him and/or did not know that the acts were wrong. The commissioner dismissed the petition, and said that he was satisfied that the husband did not realise what he was doing when he committed the acts of violence against his wife and, further, that when he committed the acts, he did not think that they were wrong. The petitioner appealed.

LORD GODDARD, C.J., said that the commissioner, in coming to his conclusion, had applied the rules in *Macnaghten's* case (1843), 10 Cl. & F. 200. In *Swan* v. *Swan* [1953] P. 258 the question had been much discussed, and Hodson, L.J., had been right in forming the conclusion that both limbs of the rule applied when considering whether or not a respondent, who alleged insanity, had been guilty of cruelty. There was no good reason why there should be any difference between the rule applied by the Divorce Division and in the Criminal Courts. Before personal injury inflicted on a spouse could be excused on the ground of insanity, it must be shown either that the person accused did not know the nature and character of the acts committed, or did not know that they were wrong. On the evidence, the commissioner had come to a wrong conclusion, and the appeal should be allowed.

HODSON, L.J., and VAISEY, J., agreed. Appeal allowed.

APPEARANCES: *A. R. A. Beldam* (*Philip Mills & Co.*, Guildford); *B. S. Horner* (*Official Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 756**

HUSBAND AND WIFE: RESTITUTION OF CONJUGAL RIGHTS: CONDONATION

Wells *v.* Wells

Lord Goddard, C.J., Hodson and Romer, L.JJ.

1st November, 1954

Appeal from Mr. Commissioner Grazebrook, Q.C.

A husband had intercourse with his wife immediately after she had confessed to him that she had committed adultery with and was pregnant by another man. Later he learned that she had committed adultery with the same man on a number of occasions. He thereupon left the matrimonial home, and refused to return, although his wife begged him to do so; but he continued to support her and the child of their marriage. Later the wife filed a petition for restitution of conjugal rights, and by his answer the husband alleged just cause for leaving her, namely, the adultery and also many kinds of unwifely conduct not amounting to matrimonial offences. Having seen the answer, the wife wrote to him accusing him in turn of many unkind acts during their married life. The husband thereupon amended his answer to allege that she had not a sincere desire to resume cohabitation with him. The commissioner, holding that the husband's act did not amount to condonation in law, as he did not know the full facts, and that the wife was not sincere in her request for her husband's return, refused a decree. The wife appealed.

LORD GODDARD, C.J., said that the law regarding restitution was in a curious position, and it was not easy to reconcile all the cases. As to condonation, the court could not now say that, when an act of intercourse took place with knowledge of the wife's unfaithfulness, there was not complete condonation (see *Henderson* v. *Henderson* [1944] A.C. 49). As to the wife's right to restitution, the commissioner did not appear to have given due consideration to the expression "lack of sincerity" as used in the cases. In *Price* v. *Price* [1951] P. 413, although the wife had said that she hated her husband, the court held that, as she obviously desired that the matrimonial home should be re-established, she was entitled to a decree. In the present case the facts showed that the wife wished her husband to return, although there might be no mutual affection; and she was entitled to a decree.

HODSON and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *D. R. Stuckey* (*P. Simes*, Law Society); *V. Russell* (*Arthur Benjamin & Cohen*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1390**

AGRICULTURAL LAND TRIBUNAL: DEFECTS IN APPOINTMENT OF MEMBERS CURABLE BY STATUTE

Woollett *v.* Minister of Agriculture and Fisheries

Denning, Jenkins and Morris, L.JJ.

9th November, 1954

Appeal from Stable, J. ([1954] 1 W.L.R. 1149; *ante*, p. 576).

The Agriculture Act, 1947, by para. 15 of Sched. IX thereto, requires that the two nominated members of an

agricultural land tribunal "shall, for each reference to the tribunal, be appointed by the Minister." Two nominated members of such a tribunal were appointed informally and without specific authorisation from the Minister, by a person who performed duties in the dual capacity of servant to the Minister and secretary of the tribunal, and who followed the prevailing practice established in the area by his predecessor. The tribunal purported to confirm a proposal by the Minister to give a certificate under s. 85 (2) of the Act of 1947, retaining in his possession land under requisition. The Minister gave such a certificate, which, by the combined effect of s. 92 of the Agriculture Act, 1947, and of s. 1 and paras. 15 and 16 of Pt. IV of Sched. I to the Acquisition of Land (Authorisation Procedure) Act, 1946, had the effect of a compulsory purchase order which could only be questioned in the High Court within six weeks of the service of notice of the making of the certificate. Stable, J., held that, as the appointments were not made in accordance with the statutory provisions, there was no tribunal and the Minister's certificate was accordingly null and void, so that the plaintiff was not precluded from obtaining a declaration from the court to that effect, despite the fact that her writ was issued more than six weeks after service of notice of the making of the certificate. The Minister appealed.

DENNING, L.J., said that on the evidence he did not think that anyone in authority had ever appointed the two nominated members to sit. The root mistake was that no one was authorised to write a letter of appointment on the Minister's behalf and no one did so. The absence of writing would only be an informality, but the absence of any actual or professed authority was a defect in the appointment which was fatal unless cured by other provisions of the Act. But para. 20 (2) of Sched. IX, providing for validation of acts when it was afterwards discovered that there was a defect in the appointment, exactly covered this case. The absence of authority in the person who made the appointments was no more than a defect, which was cured by the Act. Even if Stable, J., was right in thinking that the supposed tribunal was no tribunal at all, the Minister had a powerful defence in law in that he had given his statutory certificate which, as the result of statutory provisions which were exceedingly complicated and riddled with cross-references, had effect as if it was a compulsory purchase order, and as such could not be questioned in any legal proceedings whatsoever except within six weeks of notice of the certificate being given. The plaintiff was caught in the net of the statute, and the appeal should be allowed.

JENKINS, L.J., while holding on the evidence that the person who made the appointments had been effectively authorised to do so on the Minister's behalf and had made the particular appointments within the meaning of para. 15 of Sched. IX to the Act of 1947, agreed that, if those conclusions were wrong, any defect that there might have been was curable under para. 20 (2) of Sched. IX, and that in any event the action was barred by the plain effect of para. 16 of Pt. IV of Sched. I to the Act of 1946, as applied to s. 85 of the Act of 1947 by s. 92 of the Act of 1947.

MORRIS, L.J., while holding on the evidence that the instructions authorising appointments were so lacking in precision as to neglect the statutory provisions, and that the person who made them acted in his capacity as secretary of the tribunal and not as the servant of the Minister, with the result that the exercise of the authority was erroneous, and amounted to a defect in the appointments, agreed that the defect was curable by the Act and that the present action was statute-barred.

Appeal allowed. Leave to appeal granted.

APPEARANCES: *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *Basil Wingate-Saul* (*Solicitor, Ministry of Agriculture and Fisheries*); *A. P. Marshall*, Q.C., and *Gilbert Dare* (*Lucien Fior*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[3 W.L.R. 776**

QUEEN'S BENCH DIVISION

MINES AND MINERALS: BREACH OF REGULATIONS BY EMPLOYER AND EMPLOYEE: APPORTIONMENT OF LIABILITY

Laszczyk *v.* National Coal Board

Pearson, J. 30th July, 1954

Action tried at assizes.

The plaintiff, a haulage worker in the employ of the defendants, worked at the coal face in breach of the safety directions given to him by the colliery training officer in compliance with s. 74 of the Coal Mines Act, 1911. This work was nevertheless carried out for a period of three years in accordance with the instructions of his immediate superior, although such work by a haulage worker was prohibited by the Coal Mines (Training) General Regulations, 1945. As the result of the negligence of a shot-firer's sentry the plaintiff was seriously injured by an explosion at the coal face. Issues arose as to whether the plaintiff bore any and if so how large a share of responsibility for his own injuries on account of his breach of the safety directions.

PEARSON, J., said that both the defendants and the plaintiff had committed a breach of s. 74 of the Coal Mines Act, 1911, and of reg. 4 (1) of the Coal Mines (Training) General Regulations, 1945. Having regard to *National Coal Board* v. *England* [1954] A.C. 403; *ante*, p. 176 and *Walsh* v. *National Coal Board* (C.A.; 11th May, 1954; unrep.), it must be held that the plaintiff was wrongfully working at the coal face, and that his act was sufficiently proximate to the accident as to be regarded as one cause of it. In view of the continual wrongful instructions given to the plaintiff over three years, his share of responsibility was quite small, and should be assessed at 5 per cent. On that basis, there would be judgment for £5,442. Judgment for the plaintiff.

APPEARANCES: *D. J. Brabin*, Q.C., and *R. Lambert* (*Adam F. Greenhalgh & Co.*, Bolton); *J. R. D. Crichton*, Q.C., and *C. M. W. Elliott* (*C. J. Hodgson*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1426**

PRINCIPAL AND AGENT: FALSE PLEA AND EVIDENCE BY AGENT AS TO IDENTITY OF PRINCIPAL: AGENT LIABLE AS PRINCIPAL

Hersom *v.* Bernett

Roxburgh, J. (sitting as an additional judge of the Queen's Bench Division). 22nd October, 1954

Action.

The plaintiff bought from the defendant, acting as agent for an undisclosed principal, certain goods which were later found to have been stolen by a person unknown. In an action for the price of the goods, the defendant pleaded that his principal was one *W*, and gave evidence to that effect which the court rejected as false. A submission was made for the defendant that as he was not the principal, and as the plaintiff could not establish the identity of the principal, the action failed.

ROXBURGH, J., said that it was not surprising that no authority for the defendant's contention could be found; it was more surprising that the plaintiff could find no authority against it, except a *dictum* attributed to Lord Kenyon in *Owen* v. *Gooch* (1797), 2 Esp. 567, in an unreliable series of reports, to the effect that "if goods are ordered to be delivered on account of another, and after delivery the person who gave the order refuses to tell the tradesman who the person is, in order that he may sue him, under such circumstances he is himself liable." Whether that *dictum* was right or wrong, the present issue was concerned with a later stage in the proceedings. The defendant pleaded that *W* was his principal, and had refused to give any but the most meagre particulars on the subject. That was a representation on which the plaintiff framed his case at trial, and he had succeeded in completely demolishing that representation by cross-examination and otherwise. If the defendant were then allowed to withdraw the representation, the plaintiff would suffer detriment. That could not be allowed. A fundamental principle of justice demanded that a defendant who had given false evidence as to the identity of his principal could not be heard to argue that his principal might have been somebody else; he must thereafter be treated as having no principal; or, in other words, as being himself the principal. There must be judgment for the plaintiff. Judgment for the plaintiff.

APPEARANCES: *J. L. Elson Rees* (*Warmingtons & Trevor Jones & Saml. Price & Sons*); *Leonard Caplan*, Q.C. (*Victor Mishcon & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 737**

BANKING: CROSSED WARRANT "PAY *A* (for *B*)": BANK CREDITING *A's* PERSONAL ACCOUNT

Bute (Marquess) *v.* Barclays Bank, Ltd.

McNair, J. 28th October, 1954

Action.

In August, 1948, one McGaw was appointed manager of three farms in Scotland belonging to the plaintiff. His duties included the making of applications to the Department of Agriculture for Scotland for hill sheep subsidies in respect of the farms, and in January, 1949, he forwarded three such applications. On 9th May, 1949, McGaw left the plaintiff's employment. No

fresh instructions were sent by the plaintiff to the Department of Agriculture and in September, 1949, the department, in accordance with their usual practice, sent to McGaw, in satisfaction of the applications, three warrants crossed "Not negotiable," and stating: "If this form, duly receipted, is presented through a bank within one month the King's and Lord Treasurer's Remembrancer will pay Mr. D. McGaw, Kerrylamont, Rothesay, Bute" (the name and address being in a printed rectangle) "£133 10s." (in the case of one of the warrants) "in respect of Hill Sheep Subsidy, 1949." Immediately opposite the name "Mr. D. McGaw" but outside the box were the words "(for the Marquess of Bute)." At the foot of the form was a note: "The receipt must be signed with exactly the same name as is shown in the address . . ." On 29th September McGaw applied to a bank in Yorkshire for permission to open a personal account with the warrants, and the bank, although he was unknown to them, credited the amount of the warrants to an account in his name and forwarded them for collection. The proceeds were, in due course, credited to the bank and, having taken up references, the bank permitted McGaw to draw on the account. The plaintiff sued the bank for the £546, the total sum payable under the three warrants, damages for conversion, alternatively as moneys had and received by the bank to his use. The bank pleaded (1) that McGaw and not the plaintiff was the true owner of the warrants and, therefore, the plaintiff was not entitled to sue in conversion; (2) estoppel by representation against the plaintiff, and (3) a defence under s. 82 of the Bills of Exchange Act, 1882.

McNAIR, J., said that, in his judgment, in order to claim in conversion it was not necessary for the plaintiff to establish that he was the true owner of the property alleged to have been converted; it was sufficient if he could prove that at the time of the conversion he was entitled to immediate possession. Since McGaw's employment was terminated in May, 1949, thereafter the plaintiff would clearly have been entitled, had he been so minded, to require McGaw to deliver the warrants to him since the only title to receive them stemmed from McGaw's appointment as manager. At the date of the alleged conversion the plaintiff was entitled to immediate possession and, accordingly, entitled to sue in conversion. In any event he (his lordship) considered that the words "for the Marquess of Bute" formed an essential part of the description of the drawee. Since the warrants on their face purported to be payments in respect of hill sheep subsidy, which to the knowledge of the drawers was due to the plaintiff and not to McGaw, it was plain that the intention of the department must be taken to have been that the plaintiff should be the true owner of the warrants and their proceeds, leaving McGaw merely accountable to him. Accordingly, he considered that at all times the plaintiff was the true owner and not McGaw. As a matter of construction, the warrants did not contain a representation that payment might be made to McGaw personally, but for the purpose of establishing an estoppel the question was whether they could reasonably be understood to contain such a representation. In his judgment no reasonable cashier in Barnsley to whom a complete stranger presented warrants in that form, which on the face of them bore the clear indication that they were payments in respect of hill sheep subsidy, and an address in Rothesay, Bute, could have read them as containing a representation that payment could safely be made to the personal account of McGaw without any inquiry. They bore the clear indication, at the lowest, that McGaw was to receive the money as an agent or in a fiduciary capacity, and it was elementary banking practice that such documents should not be credited to a personal account of the named payee without inquiry. In his judgment the plea of estoppel failed. His last conclusion was fatal to any defence under s. 82 of the Bills of Exchange Act, 1882; the defendants had not discharged the onus of proving that they acted without negligence. Judgment for the plaintiff.

APPEARANCES: *J. Milnes Holden* and *J. E. Artro-Morris* (*Murray, Hutchins & Co.*); *Maurice L. Lyell*, Q.C., and *B. J. Brooke-Smith* (*Durrant Cooper & Hambling*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 741**

EDUCATION: CLAIM AGAINST LOCAL EDUCATION AUTHORITY FOR FULL FEES AT SCHOOL OF PARENT'S CHOICE

Watt *v.* Kesteven County Council

Ormerod, J. 2nd November, 1954

Action.

Section 76 of the Education Act, 1944, provides that local education authorities in the exercise and performance of their powers and duties under the Act "shall have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents." By s. 68: "If the Minister is satisfied . . . that any local education authority . . . have acted or are proposing to act unreasonably with respect to the exercise of any power . . . or . . . duty . . . under this Act, he may . . . give such directions . . . as appear to him to be expedient." By s. 99 (1): "If the Minister is satisfied . . . that any local education authority . . . have failed to discharge any duty imposed on them by . . . this Act, the Minister may make an order declaring the authority . . . to be in default in respect of that duty, and giving . . . directions for the purpose of enforcing the execution thereof" and such directions shall be enforceable by mandamus. The plaintiff, a Roman Catholic, declined on religious grounds to send his twin sons to an independent secondary grammar school in the defendant local education authority's area at which school the authority was prepared to pay the boys' tuition fees. He sent them instead to Roman Catholic boarding schools elsewhere and applied to the defendants for a grant to cover the whole cost of the tuition fees. The schools chosen by the plaintiff were efficient and the fees payable were less than those at the other school. The defendants refused to pay the full fees but made a grant towards them. The plaintiff claimed that by failing to pay the full fees at the school of his choice the defendants had failed in their duty under s. 76 of the Act. He sought a declaration that the defendants were under a statutory duty to provide secondary grammar education for his sons at the schools to which he had chosen to send them, and an order of mandamus directing them to carry out their duty. He also claimed repayment of sums paid by him in tuition fees. The defendants denied any breach but contended that if there were a breach the plaintiff had no cause of action enforceable in the court.

ORMEROD, J., said that the plaintiff's claim involved the proposition that the local education authority should provide education in accordance with the parents' wishes, subject to the two provisos in s. 76. But the section merely said that the authority "should have regard to" a general principle. The plaintiff's construction placed an undue strain on the language; if Parliament had meant that, they would have used much more precise terms. The second question was whether, if there had been a breach of duty, it could be enforced by the plaintiff in an action. The general principle as stated in *Doe d. Rochester* v. *Bridges* (1831), 1 B. & Ad. 847, was that where an Act created an obligation, and enforced the performance in a specified manner, performance generally could not be enforced in any other manner; the matter had been illustrated at length by Lord Simonds in *Cutler* v. *Wandsworth Stadium, Ltd.* [1949] A.C. 398, at p. 407. The plaintiff first contended that as by ss. 68 and 99 (1) action by the Minister was discretionary and not compulsory, there was no sufficient sanction to enforce duties under the Act; but it appeared that in fact sufficient powers were conferred on the Minister. Secondly, it was claimed that the scope and purpose of the Act was to benefit parents, who could accordingly sue if they suffered damage from a breach of duty. But the true scope of the Act was to secure the provision of proper educational facilities; it was not intended to benefit a class as the Factories Acts or the Coal Mines Acts were intended to benefit workmen. It followed that a breach of duty under s. 76 was not enforceable in the courts. Judgment for the defendants.

APPEARANCES: *R. Elwes*, Q.C., *H. Hope* and *P. FitzGerald* (*O'Brien & Brown*, for *Stapleton & Son*, Stamford); *Sir F. Soskice*, Q.C., and *J. P. Ashworth* (*Bircham & Co.*, for *J. E. Blow*, Sleaford).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 729**

COURT OF ARCHES, CANTERBURY

ECCLESIASTICAL LAW: RESERVATION OF THE SACRAMENT: TABERNACLE

***In re* Lapford (Devon) Parish Church**

Sir Philip Wilbraham Baker Wilbraham, Dean of Arches

2nd November, 1954

Appeal from the Chancellor of the Consistory Court of Exeter ([1954] 2 W.L.R. 1105; *ante*, *p.* 375).

The rector and churchwardens, with the support of the parochial church council, petitioned the consistory court for a faculty to place above the centre of the altar in the Lady Chapel of the church a tabernacle for the reservation of the Sacrament. No

opposition was offered. The rector, who was appointed in 1952, found that permission to reserve the Sacrament in an aumbry had previously been granted by the then bishop, there being a need in the parish to administer the Sacrament to the sick and persons whose working hours prevented them from attending Communion services at ordinary times. The rector found that the aumbry was insecure, and inconveniently placed, and suggested to the bishop that a tabernacle should be substituted. The bishop consented, subject to the grant of a faculty. The diocesan advisory committee then advised that the Sacrament should be reserved in the Lady Chapel, either in an aumbry in the north wall, or in a tabernacle above the altar. A sculptor and designer advised that an aumbry could not be constructed in the north wall, but that a tabernacle could be bolted to the wall behind the altar. Wigglesworth, Ch., dismissed the petition, holding that a tabernacle was illegal, though an aumbry would be permissible. The petitioners appealed.

The DEAN OF ARCHES said that the chancellor had held that though reservation in the circumstances was legal, he was constrained by the authority of the *Capel St. Mary* case [1927] P. 289, to hold that a tabernacle was illegal. After considering the arguments adduced on appeal, there was no sufficient reason for departing from the opinion expressed in that case that a tabernacle was illegal. As regards reservation, Archbishop Frederick Temple in 1900 had pronounced it to be illegal. It would have been legalised, subject to conditions, if the Alternative Order for the Communion of the Sick in the Prayer Book of 1928 had become law, and it would have been provided that the consecrated bread and wine should be reserved in " any aumbry or safe," not in a pyx or tabernacle. After the rejection of that Alternative Order, the bishops, who under Acts of 1840 and 1874 were responsible in their own dioceses for enforcing the law, taking into account the large majorities in convocations and the church assembly in favour of the new proposed provisions, resolved that it was not inconsistent with the principles of the Church to use such additions as fell within the proposals. That was an obligation which should be honoured as far as possible; an aumbry set in a side wall was within the limits, but a tabernacle or pyx was clearly outside. The general conclusions were: that reservation for the sick, though generally illegal, might be practised, provided that the conditions laid down in 1928 were complied with; and that where the bishop has sanctioned such reservation, a chancellor might grant a faculty for an aumbry, but not for a pyx or tabernacle. The appeal must, therefore, be dismissed. Appeal dismissed.

APPEARANCES: *Sir Andrew Clark*, Q.C., and *E. Garth Moore* (*Trollope & Winckworth*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [3 W.L.R. 748

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read Second Time :—

Churches and Universities (Scotland) Widows' and Orphans' Fund Order Confirmation Bill [H.C.] [18th November.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the Churches and Universities (Scotland) Widows' and Orphans' Fund.

Read Third Time :—

Town and Country Planning Bill [H.C.] [16th November.

Town and Country Planning (Scotland) Bill [H.C.] [18th November.

In Committee :—

Expiring Laws Continuance (No. 2) Bill [H.C.] [18th November.

Overseas Resources Development Bill [H.C.] [18th November.

B. QUESTIONS

COPYRIGHT LEGISLATION

LORD MANCROFT said that the proposals for legislation contained in the report of the Copyright Committee published in 1952 had been very carefully studied. The Brussels Convention and the Universal Copyright Convention, the ratification of which was recommended by the report, were mainly of interest to our authors and publishers, but these were by no means the only persons interested in the recommendations made by the Committee. Many of these recommendations would merit favourable consideration when an opportunity presented itself for legislation. [16th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read Third Time :—

Pests Bill [H.L.] [15th November.

B. QUESTIONS

SUPERSONIC BANGS (CLAIMS)

Mr. SELWYN LLOYD said that 333 claims had been received by the Ministry of Supply for damage alleged to be due to supersonic bangs. Payments had been made in 121 cases up to and including 10th November, 1954. There were some sixty cases under consideration at the present time. Some claims had been withdrawn, and in others it had not been possible to prove a connection between the damage and the alleged cause thereof. [15th November.

INCOME TAX (MAINTENANCE PAYMENTS)

Wing-Commander BULLUS asked the Chancellor of the Exchequer if he was aware that maintenance payments made under magistrates' courts orders were payable without deduction of income tax if their weekly amount did not exceed £5 for a wife and £1 10s. for a child, while the corresponding amounts under High Court orders were £2 and £1 respectively, so that wives in whose favour small High Court orders had been made suffered inconvenience and hardship because of the need to recover income tax which they were not liable to pay, and whether he would introduce legislation to place High Court orders on the same footing as magistrates' courts orders.

Mr. R. A. BUTLER said he was aware of the facts, but had no evidence of hardship. Where wives were in a position to claim repayment of income tax deducted from these payments, claims could be put in at short intervals. He would, however, consider the matter before the next Finance Bill. [16th November.

HOUSING REPAIRS AND RENTS ACT, 1954

Mr. DUNCAN SANDYS said he was aware that a number of cases had been heard by the Paddington, London, Rent Tribunal, in respect of claims by the landlords of a block of flats in Maida Vale for increases of rents on account of services, under the Housing Repairs and Rents Act, 1954; that the tribunal had reduced the amounts requested by the landlords for these services by about 20 per cent. and that in the meantime a majority of the tenants of these same flats had agreed to the increases which had been demanded. He was not convinced, however, of the desirability of the suggestion that legislation should be introduced to make any such agreement for increases subject to revision by a rent tribunal. The results would be, in a number of cases, that a tenant would have to pay more than he had previously agreed with his landlord. [16th November.

FURNISHED HOUSES (RENT TRIBUNAL REFERENCES)

Mr. DUNCAN SANDYS gave the following details of cases decided by rent tribunals :—

Year	References under the 1946 Act	References under Other Acts
1.11.47 to 31.10.48 ..	10,650	—
1.11.48 to 31.10.49 ..	10,868	2,300
1.11.49 to 31.10.50 ..	10,085	8,266
1.11.50 to 31.10.51 ..	8,837	6,647
1.10.51 to 30. 9.52 ..	7,191	4,003
1.10.52 to 30. 9.53 ..	5,949	2,324
1.10.53 to 30. 9.54 ..	5,345	2,738

The cases for the month of October, 1951, are included in the figures for the years ending 31.10.51 and 30.9.52—the returns were changed from monthly to quarterly. The cases decided during that month numbered 825. [16th November.

RENT BOOKS (PARTICULARS)

Mr. DUNCAN SANDYS said that in the case of all weekly rent-restricted tenancies, it had, ever since 1938, been compulsory for the landlord to provide a rent-book in which his name and address were stated. In the case of longer tenancies, this was not legally compulsory, and he was not satisfied that making it compulsory in such cases would solve the kind of difficulties which had arisen with regard to the alleged "Mr. Brady."
[16th November.

TRAFFIC LIGHTS (OFFENCES)

Mr. BOYD-CARPENTER said that para. 23 of the Traffic Signs Regulations made it, in his view, perfectly clear that it was an offence to pass traffic lights when showing red and amber together.
[17th November.

POLICE PROSECUTION (COSTS AND EXPENSES)

Major LLOYD-GEORGE said that he was causing inquiries to be made into a case in which an acquitted person, after the evidence had shown that the prosecution ought never to have been brought, had only been able to recover £5 5s. costs against the Metropolitan Police, when the actual expenses of his defence had amounted to £17 16s. [18th November.

STATUTORY INSTRUMENTS

Baking Wages Council (England and Wales) Wages Regulation Order, 1954. (S.I. 1954 No. 1508.) 8d.

Draft **British Transport Commission** (Organisation) Scheme Order, 1954. 6d.

British Transport Commission (Waveney Valley Branch) Light Railway Order, 1954. (S.I. 1954 No. 1507.) 6d.

County Court Fees (Amendment No. 2) Order, 1954. (S.I. 1954 No. 1504 (L.14).)

This order, which came into operation on 15th November, prescribes the fees payable on applications to the county court under the Landlord and Tenant Acts, 1927 and 1954, and the Agriculture (Miscellaneous Provisions) Act, 1954. It also abolishes the fee payable on an application for the oral examination of a judgment debtor when it is made in conjunction with the issue of a judgment summons.

County Court Funds (Amendment) Rules, 1954. (S.I. 1954 No. 1505 (L.15).)

These rules, which came into operation on 15th November, confer on registrars the power, already possessed by judges, to make orders for the transfer of money in the county court from a deposit account to an investment account.

County of Hertford (Electoral Divisions) Order, 1954. (S.I. 1954 No. 1523.)

Dennyloanhead - Kincardine - Kirkcaldy - St. Andrews Trunk Road (Aberdour Station Bridge) Order, 1954. (S.I. 1954 No. 1510.)

Exeter-Leeds Trunk Road (Wingerworth Diversion) Order, 1954. (S.I. 1954 No. 1511.)

Import Duties (Drawback) (No. 8) Order, 1954. (S.I. 1954 No. 1515.)

Draft **Lace Furnishings Industry** (Export Promotion Levy) (Amendment No. 3) Order, 1954.

Draft **Lace Industry** (Scientific Research Levy) (Amendment No. 3) Order, 1954.

Motherwell and Wishaw Burgh Water Order, 1954. (S.I. 1954 No. 1516 (S.171).)

National Health Service (Edinburgh Southern Hospitals Endowments Scheme) Approval Order, 1954. (S.I. 1954 No. 1512 (S.170).) 6d.

Open-Cast Coal (Highway) Orders (Revocation) (No. 3) Order, 1954. (S.I. 1954 No. 1517.)

Pin, Hook and Eye, and Snap Fastener Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1954. (S.I. 1954 No. 1509.) 5d.

Safeguarding of Industries (Exemption) (No. 10) Order, 1954. (S.I. 1954 No. 1514.)

Training of Teachers Grant Amending Regulations No. 3, 1954. (S.I. 1954 No. 1506.)

Wolverhampton Water (Stableford Pumping Station) Order, 1954. (S.I. 1954 No. 1513.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Hire-Purchase Agreement—ASSIGNMENT—RIGHT OF ENTRY AND SEIZURE

Q. *A* assigns to *B* the benefit of a hire-purchase agreement "with the full benefit and advantages thereof and all moneys now or to be payable by the hirer thereunder together with all rights and remedies for securing recovering and enforcing payment of such moneys." Can *B* enter upon the hirer's premises and take possession of the goods (*a*) where the Hire Purchase Act, 1938, applies and less than one-third of the hire-purchase price has been paid, or (*b*) where the said Act does not apply?

A. Primarily these questions depend on the powers given to the owner by the hire-purchase agreement in question. However, (*a*) if the 1938 Act applies, a term giving the owner authority to enter any premises to retake the goods is void by s. 5; (*b*) even if the Act does not apply, a right to enter premises and seize the goods has been held to be a personal licence only and not assignable: *Re Davis & Co.* (1888), 22 Q.B.D. 193, following *Brown* v. *Metropolitan Counties Life Assurance Society* (1859), 28 L.J.Q.B. 236.

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, 102-103 Fetter Lane, London, E.C.4.

They should be **brief, typewritten in duplicate,** and accompanied by the name and address of the sender **on a separate sheet,** together with a **stamped addressed envelope.** Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Rent Restriction—SURRENDER OF STATUTORY TENANCY

Q. An elderly widow, statutory tenant of a rent-controlled house, has her son and his wife living with her. The son and his wife have contracted to buy the house from the owner, and a 100 per cent. mortgage is being obtained by them from a building society. The society, however, wishes to be assured that it would be able to obtain vacant possession in case of default by the borrowers, and in this connection requests that the existing tenancy be surrendered by the widow to the borrowers prior to completion. The widow wishes to aid her son and his wife and was quite willing to surrender her tenancy to them. She therefore requested the owner of the house to replace her name on the rent book with the name of her son and daughter, and this has been done. We have also obtained a letter from her to the effect that she has surrendered her tenancy to her son and his wife and that she merely resides in the house as their licensee. The contract of sale provides for vacant possession on completion, and there is no clause stating that the sale is subject to any tenancy. The contract was entered into after the above steps were taken by the widow. Would you consider that we can now properly report to the building society that its position is protected as requested, or are there any other steps which should be taken to ensure that the widow's tenancy has now ceased to exist?

A. Though, as articles appearing in our "Landlord and Tenant Notebook" have endeavoured to establish, the statement as to the perdurability of statutory tenancies made by Lord Greene, M.R., in *Brown* v. *Draper* [1944] K.B. 309 (C.A.) can now be qualified (see 97 SOL. J. 708 and pp. 139 and 347, *ante*), it would not in our opinion be correct to advise the building society that its position would be protected. The so-called "surrender" of the tenancy to son and daughter-in-law might evidence an intention to surrender the statutory tenancy to the landlord, and we consider that *Nightingale* v. *Courtney* [1954]

1 Q.B. 399 (C.A.); *ante*, p. 110, warrants the proposition that such a tenancy *can be* surrendered; but, as the authorities stand, it would not be possible to advise that the widow could not, in the events visualised, successfully contend that nothing which had occurred had destroyed her statutory rights. If, having regard to her age, the society would be willing to make the advance subject to the widow's having a licence for her life, no "rent" being payable by her, the surrender of the tenancy would, we think, be held to be effective as being for her benefit: *Foster* v. *Robinson* [1951] 1 K.B. 149 (C.A.) is the authority which supports this view. If such a proposal would not satisfy the society, we consider that the only thing to be done would be for the widow to go out of residence and judgment for possession obtained against her as a non-occupying tenant.

NOTES AND NEWS

Honours and Appointments

The Queen has been pleased to appoint Mr. NORMAN JOHN SKELHORN, Q.C., to be Recorder of the City of Plymouth, with effect from 19th November, 1954.

Mr. GEORGE SAMUEL ASHWORTH, deputy town clerk of Darwen, Lancs, has been appointed town clerk of Bridport, and is to take over his new post early in the new year.

Mr. JAMES H. EXLEY has been appointed whole-time justices' clerk for the Derby County, Appletree and Repton Petty Sessional Divisions.

Mr. H. H. THOMAS, of the treasurer's department, Salop County Council, has been appointed town clerk of Bishop's Castle, England's smallest borough.

Mr. H. M. THORNTON has been appointed assistant solicitor in the town clerk's office, Lancaster, in succession to Mr. WILLIAM ARTHUR MIDDLEHAM, who was recently appointed deputy town clerk of Brighouse.

Mr. JOHN CHARLES WILKINSON, formerly legal and committee clerk to the Isle of Ely County Council, has been appointed assistant solicitor to Cambridgeshire County Council.

Personal Notes

Mr. Reginald Herbert Penley, solicitor, of Dursley, Gloucestershire, and Mrs. Penley celebrated their golden wedding on 10th November.

Sir Geoffrey Vickers, V.C., solicitor, has informed the Minister of Fuel and Power that for personal reasons he wishes to resign his membership of the National Coal Board as from 28th February next.

Miscellaneous

CHRISTMAS BOXES

In an Inland Revenue notice it is stated that for 1953 and earlier years Savings Certificates, etc., given by employers to employees as Christmas presents in lieu of customary gifts in kind were, under an extra-statutory concession, not charged to income tax. It was announced by the Chancellor of the Exchequer on 15th December, 1953, in reply to a parliamentary question, that the concession will not be continued for 1954 and subsequent years, the special conditions which justified it during the war and in post-war years having largely ceased to exist.

Wills and Bequests

Mr. R. E. George, solicitor, of Newtown, Montgomeryshire, left £23,640 (£23,503 net).

Mr. E. G. Roscoe, solicitor, of Lincoln's Inn, W.C.2, left £10,429 (£8,999 net).

OBITUARY

MR. A. BERESFORD

Mr. Alexander Beresford, solicitor, of Wells, Somerset, died on 20th November, aged 76. He was admitted in 1905.

MR. A. R. FLINT

Mr. Albert Reginald Flint, solicitor, of Derby, and second senior member of Derby Town Council, died recently. Only last month, at the Derby Charter Celebrations, he received the Honorary Freedom of the Borough. In 1905 he joined the Town Council and, with two periods of broken service, has served for a total of forty years. He was a former director of Derby County Football Club. He was admitted in 1899.

MR. R. GREENE

Mr. Roger Greene, solicitor, chairman of the Irish News Agency, died on 2nd November, aged 42. In 1950 he was president of the Incorporated Law Society of Ireland.

MR. R. STROTHER-STEWART

Mr. Robert Strother-Stewart died at his home at Newcastle upon Tyne on 15th November, aged 76. In 1905 he was admitted a solicitor and from 1909 to 1912 was a member of the Newcastle Board of Guardians. He was a member of the Newcastle City Council from 1912 to 1924. He was called to the Bar by the Inner Temple in 1919 and thereafter practised on the North-Eastern Circuit. In 1923 he was M.P. for Stockton-on-Tees. From 1930 to 1933 he was legal adviser to the Governor of Malta, and in 1933 was made a Judge of the Supreme Court of the Gold Coast Colony, remaining in that office until 1942 when he returned to England. In 1945 he became chairman of the Newcastle Pensions Appeal Tribunal.

SOCIETIES

The annual dinner of BRADFORD INCORPORATED LAW SOCIETY was held at Bradford on 9th November. Mr. Justice Pearson responded to the toast of "The Legal Profession," proposed by Mr. Derek Veale, president of the Leeds, Bradford and District Society of Chartered Accountants, and Mr. T. G. Lund, secretary of The Law Society, responded to the toast of "Our Guests," proposed by Mr. G. Ronald Walker, president of Bradford Incorporated Law Society. Others among the guests present were: The Lord Mayor of Bradford, Ald. H. J. White; Judge Myles Archibald, Bradford County Court; Mr. A. R. B. Priddin, Bradford Registrar; Mr. R. S. Bishop, Bradford City Coroner; Mr. F. G. Owens, Clerk to the Bradford City Magistrates; Mr. T. L. Chalton, president of Leeds Law Society; Mr. J. D. Eaton Smith, president of Huddersfield Law Society; Mr. J. E. Sanger, president of Halifax Law Society; Mr. Alan Bottomley, secretary of Bradford Law Students' Society; Mr. P. Wheater, president of Bradford and District Auctioneers' and Estate Agents' Association; Mr. G. V. Averdieck, president of Bradford Chamber of Commerce; Mr. A. C. Mirfield, president of the Insurance Institute of Bradford; and Mr. J. S. Kipling, chairman of the Bradford centre of the Institute of Bankers.

At the annual general meeting of the MID-ESSEX LAW SOCIETY held at Brentwood on 29th October, the following officers were elected for 1955: president, W. J. Bailey (Chelmsford); vice-president, W. Edwards (Dunmow); hon. secretary, G. C. Green (Brentwood); and hon. treasurer, F. N. Wingent (Chelmsford).

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme: 29th November: Musical Evening, Master Pengelly has arranged a concert of varied music especially for the Society. The concert will be held at the Music Room, Royal Courts of Justice (West Wing, ground floor), 7.30 p.m. Refreshments. Members and their guests. 2nd December: Reel Club, Law Society, 6 p.m. Refreshments. Members, 1s., non-members, 1s. 6d. 10th December: Annual Dinner and Dance, Law Society's Hall, Dinner 7 p.m. for 7.15 p.m.; dancing 9 p.m. to 1 a.m.; buffet, bar, cabaret. Tickets: dinner and dance, £1 2s. each; dance, 7s. 6d. each, from Dance Secretary at Society's address. 15th December: Theatre Party, details from Anne Churchill, ACO 0183 (HOL 6821—day only). 16th December: Skating Party (Queens Club), meet downstairs in Pirates' Cabin opposite Queensway Tube at 6 p.m., or later on ice.

The MANSFIELD LAW CLUB announce that a Moot is to be held on 9th December at 6 p.m., at the City of London College, Moorgate, E.C.2. Mr. A. S. Diamond, M.A., LL.D., Master of the Supreme Court, Queen's Bench Division, will be in the chair. Tea will be available for members and guests from 5.30 p.m. onwards in the buffet adjoining the hall (Room 114). Visitors are welcome at all meetings.

The UNION SOCIETY OF LONDON announce the following subjects for debate in December: Wednesday, 1st, "That this House views with alarm the increase in West Indian immigration"; Wednesday, 8th, "That this House would welcome the censorship of literature"; Wednesday, 15th, joint debate with the Oxford Union Society: motion to be announced later. Meetings are held in the Common Room, Gray's Inn, at 8 p.m.

The annual general meeting of the SOLICITORS BENEVOLENT ASSOCIATION was held on 3rd November at 60 Carey Street. The chairman, Mr. Leonard F. Paris, who presided, welcomed the president of The Law Society and thanked him for the personal interest which he was taking in the well-being of the Association—this was gratifying and a great encouragement to all concerned in the work of helping the less fortunate members of the profession.

The chairman, in presenting the annual report and accounts, referred to the encouraging number of new members admitted during the year, namely, 473, but stressed the need and the duty of a far greater percentage of practising solicitors to co-operate in the work of their own benevolent association. The relief granted to 313 beneficiaries amounted to £32,596 7s. 9d., and this figure brought the total relief paid out by the Association since its institution in 1858 to £877,164. The majority of the Association's beneficiaries were elderly dependants of solicitors who, through no fault of their own, had been left without means, or whose slender incomes were quite inadequate to provide the ordinary comforts of life. As shown by the accounts, the Association's income, if legacies were discounted, had again been overspent by some £7,000.

The chairman thanked The Law Society for its generous donation of 100 guineas, and also the Worshipful Company of Cutlers, the Worshipful Company of Solicitors of the City of London, and other benefactors, as well as the following provincial law societies which had made donations during the year: Ashton-under-Lyne, Stalybridge and District Law Society, Bedfordshire Law Society, Berks, Bucks and Oxon Incorporated Law Society, Birmingham Law Society, Blackpool and Fylde District Law Society, Bury and District Law Society, Cambridgeshire and District Law Society, Cardiff and District Incorporated Law Society, Chester and North Wales Incorporated Law Society, Chichester and District Law Society, Chorley Law Society, Cornwall Law Society, Croydon and District Law Society, Devon and Exeter Incorporated Law Society, Doncaster and District Law Society, Dorset Law Society, Durham and North Yorkshire Law Society, Eastbourne Law Society, Gloucestershire and Wiltshire Incorporated Law Society, Gravesend and District Law Society, Grimsby and Cleethorpes Law Society, Hampshire Incorporated Law Society, Herefordshire, Breconshire and Radnorshire Incorporated Law Society, Isle of Thanet Law Society, Isle of Wight Law Society, Kent Law Society, Leicester Law Society, Luton Law Society, Manchester Law Society, Mid-Essex Law Society, Mid-Surrey Law Society, Northamptonshire Law Society, Scarborough Law Society, Southend-on-Sea and District Law Society, Suffolk and North Essex Law Society, Tunbridge Wells, Tonbridge and District Law Society, Warrington Law Society, West Surrey Law Society and Worthing Law Society.

The Board of Directors were re-elected, and the president of The Law Society thanked them for their services during the past year. The honorary auditors, Mr. Ernest Goddard and Mr. John Venning, were reappointed, together with Messrs. Edward Moore & Sons, chartered accountants. A hearty vote of thanks to the chairman for presiding at the meeting, and a warm appreciation of his successful and untiring efforts for the advancement of the Association during his year of office, were moved by Mr. F. L. Steward.

At the monthly meeting of the Board of Directors which followed, the Right Honourable The Lord Morris was elected chairman, and Mr. B. S. Pell vice-chairman, for the ensuing year.

The sum of £2,685 3s. was distributed in relief to thirty beneficiaries, £190 of this being in the form of "special" grants for clothing, convalescence, etc.

Copies of the annual report and forms of application for membership will gladly be sent if application is made to the Secretary of the Solicitors Benevolent Association at its offices, Clifford's Inn, Fleet Street, London, E.C.4.

GRAY'S INN

Monday, 15th November, being the Grand Day of Michaelmas Term, 1954, the Treasurer, His Royal Highness the Duke of Gloucester, K.G., K.T., K.P., G.M.B., G.C.M.G., G.C.V.O., and the Masters of the Bench entertained to dinner in Hall the following guests: His Excellency The High Commissioner for Australia; Sir Godfrey Thomas, Bt., G.C.V.O., K.C.B., C.S.I.; Lieut.-Colonel Sir Terence Nugent, G.C.V.O., M.C.; Sir John Weir, G.C.V.O., M.B.; Major-General Sir Julian Gascoigne, K.C.V.O., C.B., D.S.O.; Captain Sir Gerald Curteis, K.C.V.O., R.N.; Sir Stewart Duke-Elder, K.C.V.O., LL.D., F.R.C.S.; Sir Charles Hambro, K.B.E., M.C.; and The Queen's Remembrancer (Sir Frederick Baker). The Benchers present, in addition to the Treasurer, were: The Right Hon. The Lord High Chancellor; The Hon. Mr. Justice Hilbery (Deputy-Treasurer); Mr. N. L. C. Macaskie, Q.C.; Sir Arthur Comyns Carr, Q.C.; Mr. Sydney Pocock, O.B.E.; Sir John Forster, K.B.E., Q.C.; Mr. Henry Salt, Q.C.; Mr. Michael Rowe, C.B.E., Q.C.; The Hon. Mr. Justice Devlin; The Right Hon. The Lord Reid, LL.D., F.R.S.E.; The Hon. Mr. Justice Gerrard; The Right Hon. Sir Lionel Leach, Q.C.; Mr. A. P. Marshall, Q.C.; Sir Edward Maufe, R.A., F.R.I.B.A.; Mr. G. W. Tookey, Q.C.; Mr. Dingle Foot, Q.C.; The Right Hon. L. M. D. de Silva, Q.C.; Mr. J. Ramsay Willis; Mr. Christopher Shawcross, Q.C., with the Preacher (The Rev. Canon F. H. B. Ottley, M.A.), and the Under-Treasurer (Mr. O. Terry).

PRINCIPAL ARTICLES APPEARING IN VOL. 98

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